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Bar Bulletin

May 11, 2016 • Volume 55, No. 19

Cactus Glory, by Valerie Fladager

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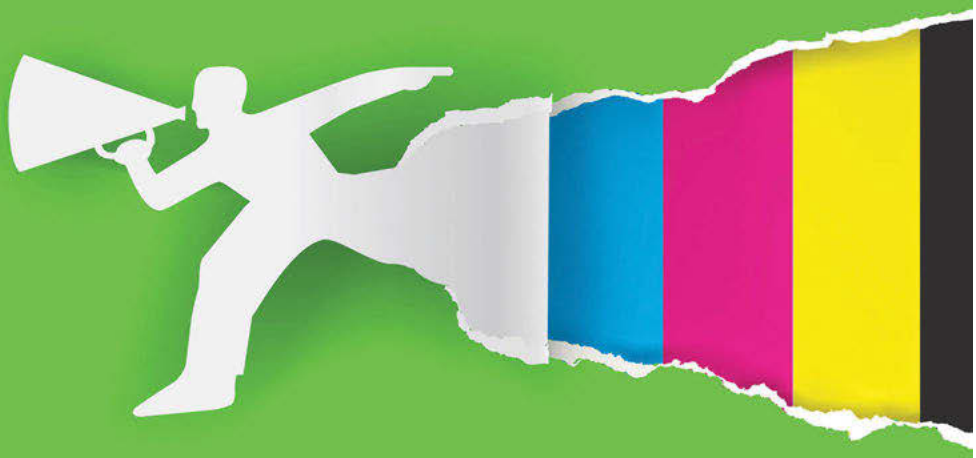

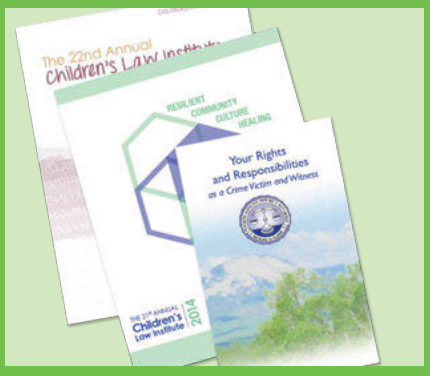

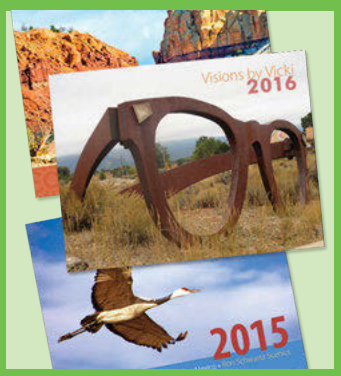

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Meetings

May

11
Children's Law Section BOD,
Noon, Juvenile Justice Center

11
Taxation Section BOD,
11 a.m., teleconference

12
Business Law Section BOD,
4 p.m., teleconference

12
Public Law Section BOD,
Noon, Montgomery and Andrews, Santa Fe

13
Elder Law Section BOD,
Noon, State Bar Center

13
Criminal Law Section BOD,
Noon, Law Office of Kelly & Boone

13
Prosecutors Section
Noon, State Bar Center

17
Solo and Small Firm Section BOD,
11 a.m., State Bar Center

17
Committee on Women and the Legal Profession,
Noon, Modrall Sperling, Albuquerque

18
RPTE Section Real Property Division,
Noon State Bar Center

State Bar Workshops

May

12
Valencia County Free Legal Clinic:
10 a.m.–2 p.m., 13th Judicial District Court, Los Lunas, 505-865-4639

17
Cibola County Free Legal Clinic:
10 a.m.–2 p.m., 13th Judicial District Court, Grants, 505-287-8831

18
Family Law Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

24
Legal Resources for the Elderly Program
9:30–10:45 a.m., presentation;
12:30–1:30 p.m., POA/AHCD Clinics
Mary Esther Gonzales Senior Center, Santa Fe, 1-800-876-6657

25
Consumer Debt/Bankruptcy Workshop:
6–9 p.m., State Bar Center, Albuquerque, 505-797-6094

June

1
Divorce Options Workshop:
6–8 p.m., State Bar Center, Albuquerque, 505-797-6003

1
Civil Legal Clinic:
10 a.m.–1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

Cover Artist: Valerie Fladager photographs a plethora of images that catch her interest and each image selected represents a series of multitude. The best are chosen for their striking design, light and color which she then interprets with digital imaging, pastels or watercolor. Her work has been sold through several galleries and arts and crafts venues. She has taught art and science and is a member of the National League of American Pen Women. Additional work can be viewed at http://valeriefladager.com/. She can also be contacted by email, kvfladager@aol.com.

Notices

Court News

Bernalillo County Metropolitan Court

Specialty Courts Education Day

Members of the legal community are invited to attend Specialty Courts Education Day at 2:30–4:30 p.m., May 20, at the Bernalillo County Metropolitan Court in the Jury Assembly Room. Learn what is new in the existing specialty courts and about two new diversion programs: Veterans Court and the Pre-Adjudication Animal Welfare (P.A.W.) Court. After the presentation, program judges and staff will be available to answer questions regarding eligibility, requirements and how these programs are making a difference in the community. Refreshments will be available. For more information, contact Camille Baca at 505-841-9897.

Administrative Office of the Courts Judicial Compensation Committee

Notice of Public Meeting

The Judicial Compensation Committee will meet at 9 a.m.–noon, June 21, in room 208 of the New Mexico Supreme Court, 237 Don Gaspar, Santa Fe, to discuss fiscal year 2018 compensation for judges of the magistrate, metropolitan and district courts, the Court of Appeals and justices of the Supreme Court. The Commission will thereafter provide its judicial compensation report and recommendation for FY18 compensation to the Legislature during the 2017 session. The meeting is open to the public. For an agenda or more information call San Nithya, Administrative Office of the Courts, 505-476-1000.

State Bar News

Attorney Support Groups

- May 16, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the third Monday of the month.)
- June 6, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (the group meets the first Monday of the month.)
- June 13, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (the group meets on the second Monday of the month). To increase access, teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Professionalism Tip

With respect to opposing parties and their counsel:
In the preparation of documents and in negotiations, I will concentrate on substance and content.

Annual Awards

Call for Nominations

The State Bar of New Mexico Annual Awards are presented each year to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2015 or 2016. Nominations are now being accepted for the 2016 State Bar of New Mexico Annual Awards. They will be presented Aug. 19 during the 2016 Annual Meeting—Bench and Bar Conference at the Buffalo Thunder Resort in Santa Fe. The deadline for nominations is May 20. A letter of nomination for each nominee should be sent to Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email jconte@nmbar.org. For award details and nomination requirements, visit www.nmbar.org > for Members > Annual Meeting > Annual Awards.

Criminal Law Section

District Attorney Candidate Forum

The Criminal Law Section invites members of the legal community, public and the media to its Second Judicial District Attorney Candidate Forum at 5:30-7:30 p.m., May 12, at the State Bar Center. Democratic primary opponents, Raul Torrez and Ed Perea, have agreed to participate. The event will be moderated by Elaine Baumgartel, news director at KUNM and local host of NPR's Morning Edition. Seating is first-come, first-served. Questions will be chosen by the Criminal Law Section Board of Directors and will be provided to the candidates prior to the event. Candidates will have 3 minutes for opening statements, 15 minutes to answer each question, 1 minute for rebuttal responses when appropriate, and 2 minutes for closing statements. To submit candidate questions (anonymously or not) or for additional information, contact Criminal Law Section Chair Julpa Davé or Joshua Boone, at NMCrimLawSection@gmail.com.

Entrepreneurs in Community Lawyering

Now Accepting Applications

The New Mexico State Bar Foundation announces its new legal incubator initiative, Entrepreneurs in Community Lawyering. ECL will help new attorneys to start successful and profitable, solo and small firm practices throughout New Mexico. Each year, ECL will accept three licensed attorneys with 0-3 years of practice who are passionate about starting their own solo or small firm practice. ECL is a 24 month program that will provide extensive training in both the practice of law and how to run a law practice as a successful business. ECL will provide subsidized office space, office equipment, State Bar licensing fees, CLE and mentorship fees. ECL will begin operations in October and the Bar Foundation is now accepting applications from qualified practitioners. To view the program description, www.nmbar.org/ECL. For more information, contact Director of Legal Services Stormy Ralstin at 505-797-6053.

Young Lawyers Division

Volunteers Needed for Wills for Heroes in Las Cruces

YLD needs volunteers for a Wills for Heroes clinic at 9 a.m.–noon, May 21, at New Mexico State University in Las Cruces. More than 30 first responders have already signed up to receive consultation and drafting of free simple wills, powers of attorney, and advanced health care directives. Consider volunteering for part or all of the clinic at NMSU. The documents are drafted via a proprietary hot docs program that will be installed on laptops for use at the clinic. For those not comfortable providing advice in this area, volunteers are needed for intake or serve as witnesses or notaries. To volunteer, contact Robert Lara at robunm@gmail.com.

UNM

Law Library

Hours Through May 14

Building & Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	Noon–6 p.m.

Reference

Monday–Friday	9 a.m.–6 p.m.
Saturday–Sunday	Closed

Alumni Association

UNM Law Scholarship Golf Classic

Join the UNM School of Law Alumni Association on June 3 at the UNM Championship Golf Course. Lunch will be at 11 a.m. with a shotgun start at 12:30 p.m. Proceeds benefit the law school's only full-tuition merit scholarships. Register online at goto.unm.edu/golf or by calling 505-277-1457.

Natural Resources Journal

Call for Papers

The *Natural Resources Journal* seeks academic articles for its Winter 2017 issue, Volume 57.1, on water governance. Suggested topics include: institutional analysis and jurisprudence, collaborative approaches to water governance, drought planning and climate adaptation, water and equity, markets, water and economic development, interplay of human and natural systems and politics and conflict in water governance. To submit an article, email (1) a manuscript of the article with citations and (2) a link to or copy of the author's CV to nrj@law.unm.edu. Submissions should be received by July 1, 2016. Authors who receive a commission will be notified by July 31. Additional information, including an archive of past issues, is available at http://lawschool.unm.edu/nrj/.

Other Bars

Federalist Society, New Mexico Lawyers Chapter

Ilya Shapiro Luncheon and Inaugural Event

The Federalist Society, New Mexico Lawyers Chapter, and the Rio Grande Foundation will host Ilya Shapiro as he discusses presents "The Scalia Legacy and the Future of the U.S. Supreme Court" at noon, May 12, at the Marriott Pyramid, 5151 San Francisco Rd. NE, Albuquerque. Seating is limited. Visit www.errorsofenchantment.com/2016/04/15/ilya-shapiro-luncheon-justice-scalias-legacy-and-the-supreme-courts-future-albuquerque/ to register.

First Judicial District Bar Association

Spring Happy Hour

Join the First Judicial District Bar Association for a spring happy hour event at 5:30–7:30 p.m., May 19, at Georgia Restaurant, 225 Johnson St., Santa Fe. Attendance is free and includes one drink and appetizers. No R.S.V.P. necessary. For more information, contact Erin McSherry at erin.mcsherry@state.nm.us.

New Mexico Women's Bar Association

Pathway to the Judiciary CLE and Social Event

The New Mexico Women's Bar Association invites members of the legal community to a CLE, "Pathway to the Judiciary" at 1–4 p.m., May 20, at the State Bar Center. Hon. Petra Jimenez Maes, Hon, M. Monica Zamora, Hon. M. Christina Armijo, Hon. Karen Molzen, Hon. Briana Zamora, Hon, Marie Ward and Hon. C. Shannon Bacon of the Second Judicial District Court will present a panel discussion addressing deciding when to compete for a judicial vacancy, the application and nomination process, running in a judicial election, understanding the day-to-day life of a judge and how being a judge impacts life outside of work. A reception will immediately follow the CLE program. All members of the bar and their guests are invited to attend. Attendance at the CLE is not a prerequisite to attend the social. For more information, contact Sharon Shaheen at sshaheen@montand.com.

Other News

Southwest Women's Law Center

Legal Issues Facing Girls in Middle and High School

The Southwest Women's Law Center invites members of the legal community and educators to its Lunch and Learn Mini Series "Legal Issues and Challenges Facing Girls in Middle and High School" (1.0 G) at noon–1 p.m., May 25, at the SWLC, 1410 Coal Avenue SW, Albuquerque. Check-in and a light lunch will begin at 11:30 a.m. The CLE will examine how lawyers can best collaborate with educators in middle and high schools to ensure that pregnant and parenting teens have equal access to education and graduation pursuant to Title IX. Register at www.swwomenslaw.org or by contacting Sarah Coffey at 505-244-0502 or info@swwomenslaw.org. Registration is $20 and registrations will be accepted at the door.

Legal Issues Facing Women Seeking Healthcare

The Southwest Women's Law Center invites the legal community to attend its Lunch and Learn Mini Series "Legal Issues Facing Women Seeking Healthcare" (1.0 G) at 11:30 a.m.–1 p.m., June 9 at the SWLC, 1410 Coal Avenue SW, Albuquerque. Registration and a light lunch will begin at 11:30 am. The course provides an opportunity for lawyers and educators to understand the legal issues and challenges facing women and girls who are seeking healthcare. This presentation will provide

an overview of statewide cuts to Medicaid services and highlight the independent challenges that women and girls who reside the rural New Mexico face when trying to access health services. Register at www.swwomenslaw.org or by contacting Sarah Coffey at 505-244-0502 or info@swwomenslaw.org. Registration is $20 and registrations will be accepted at the door.

Workers' Compensation Administration

Notice of Destruction of Records

In accordance with NMAC 11.4.4.9 (Q)-Forms, Filing and Hearing Procedures: Return of Records, the New Mexico Workers' Compensation Administration will be destroying all exhibits and depositions filed in causes closed in 2010, excluding causes on appeal. The exhibits and depositions are stored at 2410 Centre Ave SE, Albuquerque, NM 87106 and can be picked up until May 15, 2016. For further information, contact the WCA at 505-841-6028 or 1-800-255-7965 and ask for Heather Jordan, clerk of the court. Exhibits and depositions not claimed by the specified date will be destroyed.

35th Annual Conference

The New Mexico Workers' Compensation Association will host its 35th Annual Conference on May 18–20 at the Albuquerque Convention Center. "The Renaissance of Work Comp: A Conference of Enlightenment" (7.0 G, 2.5 EP) will kick off with the annual fund-raising golf tournament on May 18 at Isleta Eagle Golf Course. The following two-day conference features medical, legal and "Trends in Work Comp" tracks. For more information and to register, visit www.wcaofnm.com.

Address Changes

All New Mexico attorneys must notify both the Supreme Court and the State Bar of changes in contact information.

Supreme Court
Email: attorneyinfochange@nmcourts.gov
Fax: 505-827-4837
Mail: PO Box 848
Santa Fe, NM 87504-0848

State Bar
Email: address@nmbar.org
Fax: 505-797-6019
Mail: PO Box 92860
Albuquerque, NM 87199
Online: www.nmbar.org

Entrepreneurs *in* Community Lawyering

New Mexico's Solo and Small Practice Incubator

Program Goals

- Train new attorneys to be successful solo practitioners
- Ensure that modest -income New Mexicans have access to affordable legal services
- Expand legal services in rural areas of New Mexico

Who can apply?

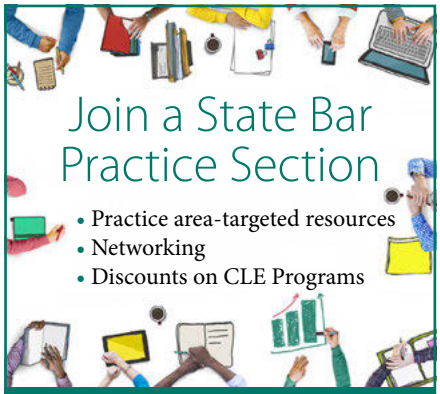
- Licensed attorneys with up to three years of practice
- Visit **www.nmbar.org/ECL** to apply, for the official Program Description and additional resources.

Currently accepting applications for the first three participating attorneys!

State Bar of New Mexico Foundation

For more information, contact Stormy Ralstin at 505-797-6053.

Submit announcements for publication in the *Bar Bulletin* to **notices@nmbar.org** by noon Monday the week prior to publication.



Legal Education

May

11 **Adding a New Member to an LLC**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

13 **Spring Elder Law Institute**
6.2 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

17 **Workout of Defaulted Real Estate Project**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Trusts 101**
5.0 G, 1.0 EP
Live Seminar
NBI Inc.
www.nbi-sems.com

19 **2016 Retaliation Claims in Employment Law Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Annual WCA of NM Conference**
8.0 G, 2.5 EP
Live Program, Albuquerque
Workers Compensation Association of New Mexico
505-377-3017

20 **The New Lawyer – Rethinking Legal Services in the 21st Century (2015)**
4.5 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Legal Writing – From Fiction to Fact: Morning Session (2015)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Social Media and the Countdown to Your Ethical Demise (2016)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **What NASCAR, Jay-Z & the Jersey Shore Teach About Attorney Ethics (2016 Edition)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Ethics and Virtual Law Practices**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

25 **Legal Rights and Issues Affecting Pregnant and Parenting Teens in New Mexico**
1.0 G
Live Program, Albuquerque
Southwest Women's Law Center
swwomenslaw.org

June

6 **2016 Estate Planning Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

7 **Conflicts of Interests (Ethicspalooza Redux—Winter 2015 Edition)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

7 **Beyond Sticks and Stones (2015 Annual Meeting)**
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

7 **The 31st Annual Bankruptcy Year in Review (2016 AM Session)**
3.5 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

9 **Legal Issues Facing Women Seeking Healthcare**
1.0 G
Live Program, Albuquerque
Southwest Women's Law Center
swwomenslaw.org

16 **Negotiating and Drafting Issues with Small Commercial Leases**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

16–17 **Ninth Annual New Mexico Legal Service Providers Conference: Holistically Addressing Poverty and Advancing Equity for Women and Families in New Mexico**
10.0 G, 2.0 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

17 **Legal Ethics in Contract Drafting**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

July

15 **The Ethics of Creating Attorney-Client Relationships in the Electronic Age**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Essentials of Employment Law**
6.6 G
Live Seminar
Sterling Education Services Inc.
www.sterlingeducation.com

21 **Drafting Sales Agents' Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

28 **Reciprocity—Introduction to the Practice of Law in New Mexico**
4.5 G, 2.5 EP
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **2nd Annual Symposium on Diversity (2016): Implicit Bias and How To Address It**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Talkin 'Bout My Generation: Professional Responsibility Dilemmas Among Generations (2015)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

August

2 **Due Diligence in Real Estate Acquisitions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Charging Orders in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

10 **Role of Public Benefits in Estate Planning**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19–20 **2016 Annual Meeting–Bench & Bar Conference**
12.5 CLE credits (including at least 5.0 EP)
Live Seminar, Santa Fe
Center for Legal Education of NMSBF
www.nmbar.org

23 **Drafting Employment Separation Agreements**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

31 **Lawyer Ethics and Disputes with Clients**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective April 29, 2016

Published Opinions

No. 33394	1st Jud Dist Santa Fe CV-10-3002, D ROMERO v PNC MORTGAGE (reverse and remand)	4/26/2016
No. 34042	1st Jud Dist Santa Fe CV-11-1534, F FOY v STATE INVESTMENT (affirm)	4/28/2016
No. 33787	1st Jud Dist Santa Fe CV-11-1534, F FOY v STATE INVESTMENT COUNCIL (affirm)	4/28/2016
No. 34077	1st Jud Dist Santa Fe CV-11-1534, F FOY v STATE INVESTMENT (affirm)	4/28/2016

Unublished Opinions

No. 33374	2nd Jud Dist Bernalillo CR-12-233, STATE v H LUCERO (affirm)	4/25/2016
No. 33590	4th Jud Dist San Miguel CR-13-42, STATE v M MORA (affirm in part and remand)	4/25/2016
No. 33857	2nd Jud Dist Bernalillo CR-12-232, STATE v L CORONADO (affirm)	4/25/2016
No. 33993	2nd Jud Dist Bernalillo CR-12-5151, STATE v M SISNEROS (affirm in part, reverse in part and remand)	4/26/2016
No. 34781	2nd Jud Dist Bernalillo CV-12-8821, WELLS FARGO v L JONES (reverse and remand)	4/26/2016
No. 35046	2nd Jud Dist Bernalillo DM-10-1888, C HOBSON v G HOBSON (reverse)	4/26/2016
No. 34946	2nd Jud Dist Bernalillo CV-11-10162, US BANK v T MORALEZ (dismiss)	4/27/2016

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

STATE BAR of NEW MEXICO

2016 Annual Meeting– Bench & Bar Conference

Call for Nominations

State Bar of New Mexico 2016 Annual Awards

Nominations are being accepted for the 2016 State Bar of New Mexico Annual Awards to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2015 or 2016. The awards will be presented August 19 during the 2016 Annual Meeting—Bench and Bar Conference at the Buffalo Thunder Resort in Santa Fe. All awards are limited to one recipient per year, whether living or deceased. *Previous recipients for the past five years are listed below.*

Distinguished Bar Service Award-Lawyer

Recognizes attorneys who have provided valuable service and contributions to the legal profession and the State Bar of New Mexico over a significant period of time.

Previous recipients: Jeffrey H. Albright, Carol Skiba, Ian Bezpalko, John D. Robb Jr., Mary T. Torres

Distinguished Bar Service Award–Nonlawyer

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

Previous recipients: Kim Posich, Rear Admiral Jon Michael Barr (ret.), Hon. Buddy J. Hall, Sandra Bauman, David Smoak

Justice Pamela B. Minzner* Professionalism Award

Recognizes attorneys or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

Previous recipients: S. Thomas Overstreet, Catherine T. Goldberg, Cas F. Tabor, Henry A. Kelly, Hon. Angela J. Jewell

*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994–2007.

Outstanding Legal Organization or Program Award

Recognizes sections, committees, local and voluntary bars and outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

Previous recipients: Pegasus Legal Services for Children, Corinne Wolfe Children's Law Center, Divorce Options Workshop, United South Broadway Corp. Fair Lending Center, N.M. Hispanic Bar Association

Outstanding Young Lawyer of the Year Award

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

Previous recipients: Tania S. Silva, Marshall J. Ray, Greg L. Gambill, Robert L. Jucero Jr., Keya Koul

Robert H. LaFollette* Pro Bono Award

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

Previous recipients: Robert M. Bristol, Erin A. Olson, Jared G. Kallunki, Alan Wainwright, Ronald E. Holmes

*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

Seth D. Montgomery* Distinguished Judicial Service Award

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and bar; generally given to judges who have or soon will be retiring.

Previous recipients: Hon. Cynthia A. Fry, Hon. Rozier E. Sanchez, Hon. Bruce D. Black, Justice Patricio M. Serna (ret.), Hon. Jerald A. Valentine

*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

A letter of nomination for each nominee should be sent to Joe Conte, Executive Director, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email jconte@nmbar.org. **Please note that we will be preparing a video on the award recipients which will be presented at the awards reception, so please provide names and contact information for three or four individuals who would be willing to participate in the video project in the nomination letter.**

Deadline for Nominations: May 20

Writs of Certiorari

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective May 11, 2016

Petitions for Writ of Certiorari Filed and Pending:

			Date Petition Filed
No. 35,865	UNM Board of Regents v. Garcia	COA 34,167	04/28/16
No. 35,864	State v. Radosevich	COA 33,282	04/28/16
No. 35,866	State v. Hoffman	COA 34,414	04/27/16
No. 35,862	Rodarte v. Presbyterian Insurance	COA 33,127	04/27/16
No. 35,861	Morrisette v. State	12-501	04/27/16
No. 35,863	Maestas v. State	12-501	04/22/16
No. 35,860	State v. Alvarado-Natera	COA 34,944	04/21/16
No. 35,859	Faya A. v. CYFD	COA 35,101	04/19/16
No. 35,857	State v. Foster	COA 34,418/34,553	04/19/16
No. 35,858	Baca v. First Judicial District Court	12-501	04/18/16
No. 35,855	State v. Salazar	COA 32,906	04/15/16
No. 35,854	State v. James	COA 34,132	04/15/16
No. 35,863	State v. Sena	COA 33,889	04/15/16
No. 35,852	State v. Cunningham	COA 33,401	04/14/16
No. 35,851	State v. Carmona	COA 35,851	04/14/16
No. 35,848	State v. Vallejos	COA 34,363	04/11/16
No. 35,849	Blackwell v. Horton	12-501	04/08/16
No. 35,839	State v. Linam	COA 34,940	04/06/16
No. 35,838	State v. Nicholas G.	COA 34,838	04/06/16
No. 35,845	Brotherton v. State	COA 35,039	04/05/16
No. 35,835	Pittman v. Smith	12-501	04/01/16
No. 35,832	State v. Baxendale	COA 33,934	03/31/16
No. 35,831	State v. Martinez	COA 33,181	03/31/16
No. 35,830	Mesa Steel v. Dennis	COA 34,546	03/31/16
No. 35,828	Patscheck v. Wetzel	12-501	03/29/16
No. 35,825	Bodley v. Goodman	COA 34,343	03/28/16
No. 35,822	Chavez v. Wrigley	12-501	03/24/16
No. 35,821	Pense v. Heredia	12-501	03/23/16
No. 35,818	State v. Martinez	COA 35,038	03/22/16
No. 35,814	Campos v. Garcia	12-501	03/16/16
No. 35,804	Jackson v. Wetzel	12-501	03/14/16
No. 35,803	Dunn v. Hatch	12-501	03/14/16
No. 35,802	Santillanes v. Smith	12-501	03/14/16
No. 35,771	State v. Garcia	COA 33,425	02/24/16
No. 35,749	State v. Vargas	COA 33,247	02/11/16
No. 35,748	State v. Vargas	COA 33,247	02/11/16
No. 35,747	Sicre v. Perez	12-501	02/04/16
No. 35,746	Bradford v. Hatch	12-501	02/01/16
No. 35,722	James v. Smith	12-501	01/25/16
No. 35,711	Foster v. Lea County	12-501	01/25/16
No. 35,718	Garcia v. Franwer	12-501	01/19/16
No. 35,717	Castillo v. Franco	12-501	01/19/16
No. 35,702	Steiner v. State	12-501	01/12/16
No. 35,682	Peterson v. LeMaster	12-501	01/05/16
No. 35,677	Sanchez v. Mares	12-501	01/05/16
No. 35,669	Martin v. State	12-501	12/30/15
No. 35,665	Kading v. Lopez	12-501	12/29/15
No. 35,664	Martinez v. Franco	12-501	12/29/15
No. 35,657	Ira Janecka	12-501	12/28/15
No. 35,671	Riley v. Wrigley	12-501	12/21/15
No. 35,649	Miera v. Hatch	12-501	12/18/15
No. 35,641	Garcia v. Hatch Valley Public Schools	COA 33,310	12/16/15
No. 35,661	Benjamin v. State	12-501	12/16/15
No. 35,654	Dimas v. Wrigley	12-501	12/11/15
No. 35,635	Robles v. State	12-501	12/10/15
No. 35,674	Bledsoe v. Martinez	12-501	12/09/15
No. 35,653	Pallares v. Martinez	12-501	12/09/15
No. 35,637	Lopez v. Frawner	12-501	12/07/15
No. 35,268	Saiz v. State	12-501	12/01/15
No. 35,612	Torrez v. Mulheron	12-501	11/23/15
No. 35,599	Tafoya v. Stewart	12-501	11/19/15
No. 35,522	Denham v. State	12-501	09/21/15
No. 35,495	Stengel v. Roark	12-501	08/21/15
No. 35,479	Johnson v. Hatch	12-501	08/17/15
No. 35,474	State v. Ross	COA 33,966	08/17/15
No. 35,466	Garcia v. Wrigley	12-501	08/06/15
No. 35,422	State v. Johnson	12-501	07/17/15
No. 35,372	Martinez v. State	12-501	06/22/15
No. 35,370	Chavez v. Hatch	12-501	06/15/15
No. 35,353	Collins v. Garrett	COA 34,368	06/12/15
No. 35,335	Chavez v. Hatch	12-501	06/03/15
No. 35,371	Pierce v. Nance	12-501	05/22/15
No. 35,266	Guy v. N.M. Dept. of Corrections	12-501	04/30/15
No. 35,261	Trujillo v. Hickson	12-501	04/23/15
No. 35,097	Marrah v. Swisstack	12-501	01/26/15
No. 35,099	Keller v. Horton	12-501	12/11/14
No. 34,937	Pittman v. N.M. Corrections Dept.	12-501	10/20/14
No. 34,932	Gonzales v. Sanchez	12-501	10/16/14
No. 34,907	Cantone v. Franco	12-501	09/11/14
No. 34,680	Wing v. Janecka	12-501	07/14/14
No. 34,777	State v. Dorais	COA 32,235	07/02/14
No. 34,775	State v. Merhege	COA 32,461	06/19/14
No. 34,706	Camacho v. Sanchez	12-501	05/13/14
No. 34,563	Benavidez v. State	12-501	02/25/14
No. 34,303	Gutierrez v. State	12-501	07/30/13
No. 34,067	Gutierrez v. Williams	12-501	03/14/13
No. 33,868	Burdex v. Bravo	12-501	11/28/12
No. 33,819	Chavez v. State	12-501	10/29/12
No. 33,867	Roche v. Janecka	12-501	09/28/12

No. 33,539	Contreras v. State	12-501	07/12/12
No. 33,630	Utley v. State	12-501	06/07/12

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)			Submission Date
No. 33,930	State v. Rodriguez	COA 30,938	01/18/13
No. 34,363	Pielhau v. State Farm	COA 31,899	11/15/13
No. 35,063	State v. Carroll	COA 32,909	01/26/15
No. 35,121	State v. Chakerian	COA 32,872	05/11/15
No. 35,116	State v. Martinez	COA 32,516	05/11/15
No. 35,279	Gila Resource v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,289	NMAG v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,290	Olson v. N.M. Water Quality Control Comm.	COA 33,238/33,237/33,245	07/13/15
No. 35,318	State v. Dunn	COA 34,273	08/07/15
No. 35,278	Smith v. Frawner	12-501	08/26/15
No. 35,427	State v. Mercer-Smith	COA 31,941/28,294	08/26/15
No. 35,446	State Engineer v. Diamond K Bar Ranch	COA 34,103	08/26/15
No. 35,451	State v. Garcia	COA 33,249	08/26/15
No. 35,499	Romero v. Ladlow Transit Services	COA 33,032	09/25/15
No. 35,437	State v. Tafoya	COA 34,218	09/25/15
No. 35,515	Saenz v. Ranack Constructors	COA 32,373	10/23/16
No. 35,614	State v. Chavez	COA 33,084	01/19/16
No. 35,609	Castro-Montanez v. Milk-N-Atural	COA 34,772	01/19/16
No. 35,512	Phoenix Funding v. Aurora Loan Services	COA 33,211	01/19/16
No. 34,790	Venie v. Velasquez	COA 33,427	01/19/16
No. 35,680	State v. Reed	COA 33,426	02/05/16
No. 35,751	State v. Begay	COA 33,588	03/25/16

Certiorari Granted and Submitted to the Court:

(Submission Date = date of oral argument or briefs-only submission)			Submission Date
No. 34,093	Cordova v. Cline	COA 30,546	01/15/14
No. 34,287	Hamaatsa v. Pueblo of San Felipe	COA 31,297	03/26/14
No. 34,798	State v. Maestas	COA 31,666	03/25/15
No. 34,630	State v. Ochoa	COA 31,243	04/13/15
No. 34,789	Tran v. Bennett	COA 32,677	04/13/15
No. 34,997	T.H. McElvain Oil & Gas v. Benson	COA 32,666	08/24/15
No. 34,993	T.H. McElvain Oil & Gas v. Benson	COA 32,666	08/24/15
No. 34,826	State v. Trammel	COA 31,097	08/26/15
No. 34,866	State v. Yazzie	COA 32,476	08/26/15
No. 35,035	State v. Stephenson	COA 31,273	10/15/15
No. 35,478	Morris v. Brandenburg	COA 33,630	10/26/15
No. 35,248	AFSCME Council 18 v. Bernalillo County Comm.	COA 33,706	01/11/16
No. 35,255	State v. Tufts	COA 33,419	01/13/16
No. 35,183	State v. Tapia	COA 32,934	01/25/16
No. 35,101	Dalton v. Santander	COA 33,136	02/17/16
No. 35,198	Noice v. BNSF	COA 31,935	02/17/16
No. 35,249	Kipnis v. Jusbasche	COA 33,821	02/29/16
No. 35,302	Cahn v. Berryman	COA 33,087	02/29/16
No. 35,349	Phillips v. N.M. Taxation and Revenue Dept.	COA 33,586	03/14/16
No. 35,148	El Castillo Retirement Residences v. Martinez	COA 31,701	03/16/16
No. 35,386	State v. Cordova	COA 32,820	03/28/16
No. 35,286	Flores v. Herrera	COA 32,693/33,413	03/30/16
No. 35,395	State v. Bailey	COA 32,521	03/30/16
No. 35,130	Progressive Ins. v. Vigil	COA 32,171	03/30/16
No. 34,929	Freeman v. Love	COA 32,542	04/13/16
No. 34,830	State v. Le Mier	COA 33,493	04/25/16
No. 35,438	Rodriguez v. Brand West Dairy	COA 33,104/33,675	04/27/16
No. 35,426	Rodriguez v. Brand West Dairy	COA 33,675/33,104	04/27/16
No. 35,297	Montano v. Frezza	COA 32,403	08/15/16
No. 35,214	Montano v. Frezza	COA 32,403	08/15/16

Opinion on Writ of Certiorari:

			Date Opinion Filed
No. 34,613	Ramirez v. State	COA 31,820	04/14/16

Writ of Certiorari Quashed:

			Date Order Filed
No. 33,725	State v. Pasillas	COA 31,513	04/18/16
No. 33,877	State v. Alvarez	COA 31,987	04/18/16
No. 34,274	State v. Nolen	12-501	04/18/16
No. 34,443	Aragon v. State	12-501	04/18/16
No. 34,522	Hobson v. Hatch	12-501	04/18/16
No. 34,582	State v. Sanchez	COA 32,862	04/18/16
No. 34,694	State v. Salazar	COA 33,232	04/18/16
No. 34,669	Hart v. Otero County Prison	12-501	04/18/16
No. 34,650	Scott v. Morales	COA 32,475	04/18/16
No. 34,812	Ruiz v. Stewart	12-501	04/18/16
No. 34,949	State v. Chacon	COA 33,748	04/18/16
No. 35,296	State v. Tsosie	COA 34,351	04/14/16
No. 35,456	Haynes v. Presbyterian Healthcare Services	COA 34,489	04/14/16

Petition for Writ of Certiorari Dismissed:

			Date Order Filed
No. 35,213	Hilgendorf v. Chen	COA 33056	11/09/15

Petition for Writ of Certiorari Denied:

			Date Order Filed
No. 35,758	State v. Abeyta	COA 33,461	04/20/16
No. 35,820	Martinez v. Overton	COA 34,740	04/19/16
No. 35,374	Loughborough v. Garcia	12-501	04/19/16
No. 35,827	Serna v. Webster	COA 34,535/34,755	04/15/16
No. 35,824	Earthworks Oil and Gas v. N.M. Oil & Gas Association	COA 33,451	04/15/16
No. 35,823	State v. Garcia	COA 32,860	04/15/16
No. 35,817	State v. Nathaniel L.	COA 34,864	04/15/16
No. 35,816	State v. McNew	COA 34,937	04/14/16
No. 35,777	N.M. State Engineer v. Santa Fe Water Resource	COA 33,704	04/14/16
No. 35,618	Johnson v. Sanchez	12-501	04/12/16
No. 35,588	Torrez v. State	12-501	04/12/16
No. 35,440	Gonzales v. Franco	12-501	04/12/16
No. 35,815	State v. Sanchez	COA 34,170	04/11/16
No. 35,813	State v. Salima J.	COA 34,904	04/07/16
No. 35,812	State v. Tenorio	COA 34,994	04/07/16
No. 35,811	State v. Barreras	COA 33,653	04/07/16
No. 35,810	State v. Barela	COA 34,716	04/07/16
No. 35,809	State v. Taylor E.	COA 34,802	04/07/16
No. 35,805	Trujillo v. Los Alamos Labs	COA 34,185	04/07/16
No. 35,608	Johnson v. Horton	12-501	04/06/16
No. 35,795	Jaramillo v. N.M. Dept. of Corrections	COA 34,528	04/05/16
No. 35,793	State v. Cardenas	COA 33,564	04/05/16

Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective April 6, 2016

Pending Proposed Rule Changes Open for Comment:

Comment Deadline

Please see the special summary of proposed rule amendments published in the March 9 issue of the Bar Bulletin. *The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for those proposed rule amendments is April 6, 2016.*

Recently Approved Rule Changes Since Release of 2015 NMRA:

Rules of Criminal Procedure for the Magistrate Courts

Rule 6-506	Time of commencement of trial	05/24/16

Rules of Criminal Procedure for the Metropolitan Courts

Rule 7-506	Time of commencement of trial	05/24/16

Rules of Procedure for the Municipal Courts

Rule 8-506	Time of commencement of trial	05/24/16

Second Judicial District Court Local Rules

LR2-400	Case management pilot program for criminal cases.	02/02/16

For 2015 year-end rule amendments that became effective December 31, 2015, and that will appear in the 2016 NMRA, please see the November 4, 2015, issue of the Bar Bulletin or visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us/nmrules/NMRules.aspx.

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.

Certiorari Granted, January 19, 2016, No. S-1-SC-35614

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-16

No. 33,084 (filed October 26, 2015)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
PETER CHAVEZ,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY
H.R. QUINTERO, District Judge

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for Appellee

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Chief Public Defender
ALLISON H. JARAMILLO
Assistant Appellate Defender
Santa Fe, New Mexico
for Appellant

Opinion

James J. Wechsler, Judge

{1} Defendant Peter Chavez appeals his convictions for the crimes of aggravated fleeing a law enforcement officer (aggravated fleeing), contrary to NMSA 1978, § 30-22-1.1 (2003), and resisting, evading, or obstructing an officer, contrary to NMSA 1978, § 30-22-1(B) (1981). Defendant argues that under his interpretation of the aggravated fleeing statute, § 30-22-1.1, the evidence was insufficient to prove that he endangered the life of another person. Additionally, Defendant challenges his conviction for aggravated fleeing on the grounds that the jury instruction failed to include an essential element of the crime. He further contends, in the alternative, that his convictions violate the double jeopardy protection against multiple punishments for the same offense. Because we are persuaded that a conviction under the aggravated fleeing statute requires a finding of actual endangerment, and that the direct and circumstantial evidence at trial was insufficient to support a finding of actual endangerment beyond a reasonable doubt, we need not address his jury instruction and double jeopardy challenges. Accordingly, we reverse Defendant's conviction for aggravated fleeing.

BACKGROUND

{2} At approximately 10:00 p.m. on November 6, 2012, Silver City police officer Joseph Arredondo was patrolling in Grant County when he observed a dirt bike traveling eastbound on Highway 180 without any lights illuminated. Officer Arredondo caught up with the dirt bike at an intersection and noticed that the vehicle did not have a license plate. The officer activated his emergency lights and followed the dirt bike as it turned into a Wal-Mart parking lot. The driver looked back over his shoulder at the officer, but instead of pulling over, he accelerated through the parking lot. Defendant jumped the curb of the Wal-Mart parking lot, drove onto a dirt path, and entered the parking lot of the Tractor Supply Store. Officer Arredondo followed the dirt bike in his police cruiser toward the Tractor Supply Store and activated his emergency siren while pursuing Defendant through the parking lots. Two cars, one traveling eastbound and one traveling westbound on Highway 180, were forced to slow down as Defendant and Officer Arredondo exited the parking lot. No other vehicles were in the area.

{3} As Defendant and Officer Arredondo traveled along the highway, approximately five cars pulled over to the side of the highway to avoid the chase. Officer Arredondo testified that Defendant's speed on Highway 180 reached approximately sixty-five miles per hour, which was ten miles over the highway's posted speed limit. At least three other police units joined the pursuit before Defendant turned from the highway onto a side street, slowed down to approximately forty to forty-five miles per hour, and then proceeded onto another side street where he accelerated back to speeds of approximately sixty miles per hour. While traveling on these side streets Defendant ran through three stop signs. Defendant and the pursuing officers did not encounter any other traffic after leaving Highway 180. Defendant then turned onto a dirt road, crossed a cattle guard, drove off-road into an open pasture, and went up a hill. Grant County Sheriff's Office deputy, Manuel Galaz, continued the chase over the hill after Officer Arredondo blew a tire and disengaged from the pursuit. Deputy Galaz was driving approximately fifteen to twenty miles per hour during the off-road pursuit. As he crested the hill in his patrol car, Deputy Galaz saw the dirt bike stopped on the other side. Deputy Galaz hit the brakes to stop his cruiser and slid downhill into the back of the dirt bike. The impact caused Defendant to fall off the dirt bike, at which point Defendant attempted to flee on foot. Officer Galaz gave chase and arrested Defendant shortly thereafter. At trial, Silver City Police Department officers Arredondo and Rascon testified that no public safety issue arose during the pursuit and that no person was endangered by Defendant's conduct.

AGGRAVATED FLEEING A LAW ENFORCEMENT OFFICER

{4} The aggravated fleeing statute reads, in pertinent part, that a person commits aggravated fleeing by "willfully and carelessly driving [a] vehicle *in a manner that endangers the life of another person* after being given a visual or audible signal to stop . . . by a uniformed law enforcement officer in an appropriately marked law enforcement vehicle[.]" Section 30-22-1.1(A) (emphasis added). A violation of Section 30-22-1.1(A) is a fourth degree felony. Section 30-22-1.1(B). Endangerment of another person is an essential element of the aggravated fleeing statute. *See* UJI 14-2217 NMRA ("[T]he state must prove to your satisfaction beyond a reasonable doubt . . . [that t]he defendant drove willfully and carelessly in a manner that endangered the life of another person[.]").

{5} We view the aggravated fleeing statute as evincing legislative intent to more severely punish people who jeopardize the safety of others while fleeing from law enforcement officers. Historically, conduct intended to thwart the efforts of an arresting officer constituted the misdemeanor crime of resisting,

evading, or obstructing an officer. Section 30-22-1. As noted by our Supreme Court, "[t]he legislative decision to create the crime of aggravated fleeing suggests a hierarchy of criminal liability based on the aggravated nature of a defendant's conduct." *State v. Padilla* (*Padilla II*), 2008-NMSC-006, ¶ 14, 143 N.M. 310, 176 P.3d 299. This aggravated nature exists specifically "when the person flees in a manner that endangers the lives of others[.]" *Id.* Importantly, the Legislature chose not to repeal any portion of Section 30-22-1 upon the enactment of Section 30-22-1.1. Instead, the resisting, evading, or obstructing an officer statute remains in effect and criminalizes conduct related to vehicular flight from law enforcement.[1] The logical inference to be drawn from the Legislature's decision not to repeal any portion of Section 30-22-1 is that an individual may flee from law enforcement, even in a vehicle, without triggering prosecution under the aggravated fleeing statute so long as the fleeing individual does not endanger others in the process. *See generally State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022 ("We examine the overall structure of the statute and its function in the comprehensive legislative scheme.").

PRINCIPLES OF STATUTORY INTERPRETATION

{6} In order to determine the merits of Defendant's sufficiency of evidence challenge, we must first address the contrasting interpretations of the aggravated fleeing statute presented by the parties. Defendant contends that the statute's essential element of endangerment requires that the State prove that a defendant actually endangered the life of another person while willfully and carelessly driving a vehicle. In this regard, Defendant argues that the Legislature did not intend to punish conduct that merely creates the potential for endangerment. Conversely, the State argues that the statute's essential element of endangerment is satisfied when a defendant's conduct either places an identifiable person in actual danger or creates the potential for placing any other person in danger. Insofar as these arguments present a question of statutory interpretation, we apply de novo review. *See State v. McWhorter*, 2005-NMCA-133, ¶ 5, 138 N.M. 580, 124 P.3d 215 ("The meaning of language used in a statute is a question of law that we review de novo.").

{7} Our goal when interpreting statutes is to ascertain and effectuate legislative intent. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. We first look to the statute's plain language, which is "the primary indicator of legislative intent." *State v. Young*, 2004-NMSC-015, ¶ 5, 135 N.M. 458, 90 P.3d 477 (internal quotation marks and citation omitted). "If the language of the statute is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation." *State v. Wilson*, 2010-NMCA-018, ¶ 9, 147 N.M. 706, 228 P.3d 490 (internal quotation marks and citation omitted). "[Appellate courts] will not read into a statute any words that are not there, particularly when the statute is complete and makes sense as written." *State v. Trujillo*, 2009-NMSC-012, ¶ 11, 146 N.M. 14, 206 P.3d 125. In the event that our application of the plain meaning rule does not indicate the true legislative intent, we may look to the history and purpose of the statute to aid our statutory construction analysis. *See State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939 ("In performing our task of statutory interpretation, not only do we look to the language of the statute at hand, we also consider the history and background of the statute."). When this expanded review is necessary, we examine the language in the context of the statutory scheme, legislative objectives, and other statutes *in pari materia* in order to determine legislative intent. *State v. Cleve*, 1999-NMSC-017, ¶ 8, 127 N.M. 240, 980 P.2d 23.

The Plain Language of the Statute

{8} Neither the aggravated fleeing statute nor the associated uniform jury instruction defines the term "endangers" as used in the statute. "When a term is not defined in a statute, we must construe it, giving those words their ordinary meaning absent clear and express legislative intention to the contrary." *State v. Tsosie*, 2011-NMCA-115, ¶ 19, 150 N.M. 754, 266 P.3d 34 (internal quotation marks and citation omitted). Our courts often use dictionary definitions to ascertain the ordinary meaning of words that form the basis of statutory construction inquiries. *State v. Boyse*, 2013-NMSC-024, ¶ 9, 303 P.3d 830. "Endangerment" is defined as "[t]he act or an instance of putting someone or something in danger; exposure to peril or harm." *Black's Law Dictionary* 644 (10th ed. 2014). Non-legal dictionaries offer similar definitions of both "endanger" and "endangerment." *See The American Heritage Dictionary of the English Language* 588 (5th ed. 2011) ("To expose to harm or danger; imperil."); 5 *The Oxford English Dictionary* 225 (2d ed. 1991) ("The action of putting in danger; the condition of being in danger."). Each of these definitions indicates that the exposure to peril or harm is an actual or current condition facing the impacted person. None of these definitions indicates a potential or future condition. Since the plain language of the statute does not contemplate potential or future harm in its use of the word "endanger," and the statute "makes sense"—with respect to who is subject to prosecution—as written, *Trujillo*, 2009-NMSC-012, ¶ 11, we will not read the statute to include potential harm absent direction from the Legislature. *Clark v. Lovelace Health Sys., Inc.*, 2004-NMCA-119, ¶ 14, 136 N.M. 411, 99 P.3d 232 ("When language in a statute enacted by the [L]egislature is unambiguous, we apply it as written, and any alteration of that language is a matter for the [L]egislature, not for this Court.").

Expansion of the Scope of the Statute by Judicial Opinion

{9} The State argues that the word "potential" was effectively added to the statute by our Supreme Court as part of its holding in *Padilla II*. In *Padilla II*, our Supreme Court reinstated a conviction for aggravated fleeing following a reversal by this Court. 2008-NMSC-006, ¶ 1. The *Padilla II* Court was not asked, and did not offer, an opinion as to the definition of endangerment under the aggravated fleeing statute. However, a portion of the opinion detailed the defendant's conduct as follows:

> [The d]efendant drove in a willful and careless manner that endangered the lives of others—he ran ten stop signs, he exceeded the speed limit, there was at least one other motorist, apart from the officer, *potentially placed at risk* because of [the d]efendant's conduct, and the passengers in the car were placed at risk when [the d]efendant careened around corners causing the door with the faulty lock to open.

Id. ¶ 17 (emphasis added).

{10} Based upon these facts, our Supreme Court held that "the defendant's conduct

[1]The pertinent text of Section 30-22-1 reads "[r]esisting, evading or obstructing an officer consists of . . . willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle[.] . . . Whoever commits resisting, evading or obstructing an officer is guilty of a misdemeanor."

gives rise to the imposition [of the aggravated fleeing statute]." *Id.* ¶ 14. However, we do not believe that the Court's use of the word "potentially" was intended to indicate that anyone who flees from law enforcement necessarily endangers all persons in the vicinity during any police pursuit.

{11} A comprehensive review of the factual background reveals that the defendant "ran a stop sign while going fifty miles per hour in a twenty-five mile per hour zone [and] barely missed colliding with another motorist." *State v. Padilla (Padilla I)*, 2006-NMCA-107, ¶ 5, 140 N.M. 333, 142 P.3d 921, *rev'd*, *Padilla II*, 2008-NMSC-006. On review, this Court held, "We think a rational jury could have found that [the d]efendant endangered another person . . . [including] another motorist on the road, whom [the d]efendant came close to striking." *Id.* ¶ 23. A near collision—that is, one in which the defendant "barely missed colliding with another motorist"— constitutes an actual, rather than a potential risk. *Id.* ¶ 5.

{12} Because the facts of *Padilla I* support a finding of actual endangerment to the other motorist, we believe that our Supreme Court's use of the word "potentially" in this context was chosen to express that a collision nearly occurred, rather than to express that another motorist was simply in the vicinity while the pursuit was taking place. Because, in *Padilla I*, other persons, including passengers and other motorists, were actually endangered, we assume that the plain language of the statute remains in effect and that only those who actually endanger others while fleeing from law enforcement are subject to punishment under the statute.[2]

SUFFICIENCY OF THE EVIDENCE

{13} Having decided that the aggravated fleeing statute requires that the State prove actual endangerment to another person, we now turn to Defendant's argument that the evidence presented at trial was insufficient to support his conviction. Defendant advances a sufficiency of evidence claim only as to the essential element of endangerment inasmuch as he argues that there was insufficient evidence to prove that he endangered the life of another person.

{14} "The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Duran*, 2006-NMSC-035, ¶ 5, 140 N.M. 94, 140 P.3d 515 (internal quotation marks and citation omitted). "[W]e must view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict." *Id.* (internal quotation marks and citation omitted). "Contrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject Defendant's version of the facts." *Id.* (internal quotation marks and citation omitted). The function of an appellate court with respect to challenges to the sufficiency of evidence is to "ensure that a rational jury *could* have found beyond a reasonable doubt the essential facts required for a conviction." *Id.* (internal quotation marks and citation omitted). We apply these principles to determine if Defendant's conviction for aggravated fleeing is supported by sufficient evidence.

{15} As a threshold matter, we note that drawing inferences from the previous published opinions of our courts related to aggravated fleeing is not entirely useful given that, in those cases, passengers were present in the vehicles while the drivers were fleeing from law enforcement. *See Padilla II*, 2008-NMSC-006, ¶ 4 ("[T]here were two passengers in the car[.]"); *State v. Coleman*, 2011-NMCA-087, ¶ 22, 150 N.M. 622, 264 P.3d 523 ("The lives of his passengers . . . were placed in jeopardy[.]"); *State v. Ross*, 2007-NMCA-126, ¶ 2, 142 N.M. 597, 168 P.3d 169 ("There were four passengers still in the vehicle."). In the present case, Defendant was operating a dirt bike without a passenger. Because of this distinction, comparisons between the willful and careless behavior exhibited by the drivers/defendants in our previous cases[3] and the willful and careless conduct exhibited by Defendant in the present case are of limited value. Within those same cases, however, there are descriptions of conduct that demonstrate endangerment of other motorists who encountered defendants on the roadways. *See Padilla I*, 2006-NMCA-107, ¶ 5 ("[The d]efendant barely missed colliding with another motorist."); *Ross*, 2007-NMCA-126, ¶ 2 ("Another vehicle had to abruptly stop in order to avoid colliding with [the d]efendant."). It is to this conduct that we look to determine whether Defendant endangered another person within the meaning of the aggravated fleeing statute.

{16} Even when viewing the evidence in the light most favorable to the guilty verdict, the State has not presented sufficient evidence to prove that Defendant endangered another person as required by the statute. The uncontroverted testimony of two participating officers was that the pursuit did not create a public safety concern or place anyone in danger. While other vehicles on the roadway were required to slow down or pull over in response to the emergency lights and sirens, no evidence of near collisions was presented at trial. We do not believe that merely taking simple, evasive maneuvers in response to emergency lights and sirens constitutes endangerment to motorists on a roadway. As such, no reasonable jury could have found beyond a reasonable doubt that Defendant endangered another person within the meaning of the aggravated fleeing statute.

{17} This is not to say that endangerment requires that a fleeing motorist pass within inches of another vehicle or that an accident is avoided only through extraordinary evasive maneuvering by another driver. When a jury returns a verdict based on evidence indicating actual endangerment, that verdict should not be disturbed. However, when, as here, the record is completely devoid of evidence of actual endangerment to passengers or other motorists, the verdict cannot stand.

CONCLUSION

{18} For the foregoing reasons, we reverse Defendant's conviction for aggravated fleeing a law enforcement officer, contrary to Section 30-22-1.1. As a result, we do not reach Defendant's alternative double jeopardy claim, which constituted Defendant's sole challenge to his conviction for resisting, evading, or obstructing an officer, contrary to Section 30-22-1(D). That conviction therefore stands.

{19} **IT IS SO ORDERED.**

JAMES J. WECHSLER, Judge

WE CONCUR:
MICHAEL D. BUSTAMANTE, Judge
CYNTHIA A. FRY, Judge

[2]The State also argues that officers were endangered when engaged in the pursuit of fleeing suspects. This argument appears foreclosed by our Supreme Court's holding in *Padilla II* that "[t]he aggravated fleeing statute does not focus upon the officer as a victim. The statute appears to be designed to protect the general public from the dangers of a high speed chase." 2008-NMSC-006, ¶ 21.

[3]These willful and careless behaviors include speeding, running through stop signs, crossing the center line, and crashing into curbs or other stationary objects. *See, e.g.*, *Padilla II*, 2008-NMSC-006, ¶ 3; *Coleman*, 2011-NMCA-087, ¶ 4; *Ross*, 2007-NMCA-126, ¶ 2.

Certiorari Denied, January 12, 2016, No. S-1-SC-35652

From the New Mexico Court of Appeals

Opinion Number:2016-NMCA-017

No. 33,657 (filed November 19, 2015)

BERNADETTE TENNYSON, ROLLIE A. GRANDBOIS, LYDIA LEYBA, GURU SHABD KHALSA, ESTER BAEHR, and ARAMATI ISHAYA, on behalf of themselves and all others similarly situated,
Plaintiffs-Appellees,
v.
SANTA FE DEALERSHIP ACQUISITION II, INC. d/b/a PREMIER MOTORCARS OF SANTA FE, DON BONNER, STEVE GALLEGOS, and MONTY MITCHELL,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
FRANCIS J. MATHEW, District Judge

RAY M. VARGAS, II
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JARAMILLO TOUCHET
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for Appellees

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for Appellants

Opinion

J. Miles Hanisee, Judge

{**1**} Defendants appeal the district court's denial of their motion to compel arbitration against absent class members. We affirm.

BACKGROUND

{**2**} Plaintiffs filed a putative class-action lawsuit against Defendants on December 10, 2010. The complaint alleged Defendants sold used cars to Plaintiffs and others without disclosing their accident history, in violation of New Mexico common law and various statutes. In lieu of answering the complaint, Defendants filed a motion to dismiss, which the district court denied on May 4, 2011. Defendants filed an answer the next day, and a second answer on November 3, 2011 after the district court permitted Plaintiffs to amend their complaint to include additional allegations of fact and two new claims against Defendants.

{**3**} On November 15, 2011, Defendants filed a motion for summary judgment on the named Plaintiffs' claims. On February 20, 2012, the district court granted in part and denied in part Defendants' motion. More than a year of discovery and discovery-related motions practice ensued. On July 29, 2013, Defendants filed renewed motions for summary judgment on Plaintiffs' remaining claims. The motions remain pending before the district court.

{**4**} The day after Defendants filed their renewed motions for summary judgment, Plaintiffs filed a motion to certify this case as a class action under Rule 1-023(B)(2), (B)(3) NMRA. On September 24, 2013, the district court granted Plaintiffs' motion to certify. Defendants sought leave to appeal the district court's order certifying the case as a class action, a request that our Court denied by written order on January 7, 2014. *See* Rule 1-023(F) ("The Court of Appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification.").

{**5**} On December 9, 2013, Defendants filed a motion to compel arbitration against class members who had been joined to the action by the district court's certification order. Defendants' motion asserted that Plaintiffs and all absent members of the class had signed a Buyers Order Agreement (the Agreement) that contained a clause requiring all disputes arising from the Agreement to be decided by arbitration.

{**6**} On February 19, 2014, the district court denied Defendants' motion to compel arbitration. The district court found that Defendants had waived their right to invoke the arbitration clause in the Agreement. The district court made the following findings of fact in support of this conclusion.

1. Plaintiffs filed their initial class action complaint on December 10, 2010.
2. Defendants filed a motion to strike and dismiss Plaintiffs' complaint on January 31, 2011, and the motion did not "[refer] to arbitration or [seek] to compel arbitration."
3. Defendants filed an answer to Plaintiffs' complaint on May 5, 2011. The answer made no reference to the arbitration clause and did not seek to compel arbitration.
4. Plaintiffs moved to amend their complaint on May 16, 2011.
5. Defendants filed their response to the motion to amend on May 27, 2011. The response made no mention of the arbitration clause and did not seek to compel arbitration.
6. Defendants filed an answer to Plaintiffs' first amended complaint on November 3, 2011. The answer did not mention the arbitration clause or seek to compel arbitration.
7. Defendants filed a motion for summary judgment on November 15, 2011. Attached to the motion was an affidavit executed by one of the named Defendants, Monty Mitchell. Attached to Mitchell's affidavit was a copy of the Agreement between Defendants and Plaintiff Guru

Shabd Khalsa. Defendant Mitchell's affidavit states that the attached Agreement "is true, correct and complete," but the Agreement does not contain an arbitration clause.

8. Between June 1, 2011, and December 9, 2013, the parties engaged in substantial discovery, including written discovery, depositions of the parties, and designated witnesses under Rule 1-030 NMRA.
9. Between June 1, 2011, and December 9, 2013, the parties engaged in substantial judicial activity, including motions to compel, motions for protective orders, scheduling conferences, and class certification without any Defendant asserting a right to arbitration.
10. Throughout these proceedings, Defendants acted inconsistently with any intent to enforce any right to arbitration or to assert any right to arbitrate.
11. All parties have incurred substantial costs and expenses in the discovery process and in participating in judicial proceedings since December 10, 2010.
12. Compelling arbitration after Defendants delayed in asserting a right to arbitrate would substantially prejudice Plaintiffs as the amount of time and expenses incurred by them in prosecuting the class claims could have been avoided with a timely demand for arbitration.
13. Defendants waived any right to compel arbitration with respect to the named Plaintiffs and the unnamed class members.

{7} On March 10, 2014, Defendants appealed the district court's order denying their motion to compel arbitration. *See* NMSA 1978, § 44-7A-29(a)(1) (2001) ("An appeal may be taken from[] an order denying a motion to compel arbitration[.]").

STANDARD OF REVIEW

{8} Substantial evidence must support a district court's conclusion that a party has waived its right to arbitrate a dispute. *United Nuclear Corp. v. Gen. Atomic Co.*, 1979-NMSC-036, ¶ 36, 93 N.M. 105, 597 P.2d 290. Three principles govern our review of the district court's waiver finding in the context of a motion to compel arbitration: (1) the strong public policy preference in favor of arbitration, (2) "relief [should] only be granted upon a showing of prejudice to the party opposing arbitration[,]" and (3) "the extent to which the party now urging arbitration has previously invoked the machinery of the judicial system." *Bd. of Educ. Taos Mun. Sch. v. Architects,* 1985-NMSC-102, ¶¶ 7-10, 103 N.M. 462, 709 P.2d 184.

DISCUSSION

{9} Defendants do not challenge the district court's finding that the named Plaintiffs would be prejudiced by an order compelling arbitration. Nor do Defendants offer any argument that the public policy favoring enforcement of arbitration clauses requires reversal in this case. Instead, Defendants challenge (A) the district court's factual findings underlying its conclusion that Defendants failed to invoke their right to arbitrate this dispute until two years after Plaintiffs filed their complaint, and (B) the district court's conclusion that Defendants had waived their right to compel arbitration against absent class members who were joined to this action by the district court's order certifying this case as a class action.

The District Court's Findings of Fact Were Supported by Substantial Evidence

{10} Defendants challenge the district court's finding that Defendants' answer to Plaintiffs' first complaint on May 5, 2011, did not refer to the arbitration clause or otherwise seek to compel arbitration. Defendants say they invoked the arbitration clause in the ninth affirmative defense, which states that "Plaintiffs' claims are subject to terms, conditions, exclusions, and limitations as provided by contract, and Plaintiffs' claims are limited or barred by said provisions."

{11} We disagree. In *Architects*, our Supreme Court reversed the district court's order compelling arbitration, finding that the defendants had "clearly waived their right to demand arbitration." *Id.* ¶ 17. In *Architects*, the Court noted that the defendants had made express mention of a contractual right to arbitrate their dispute with the plaintiff in their first affirmative defense in their answer to the plaintiff's complaint. *Id.* ¶ 3. The court noted that:

> Had they not done so, waiver might be presumed. Had they moved promptly thereafter to dismiss the claim against them and to compel arbitration, their motion would have been granted, and upheld by this court on appeal.
>
> . . . Instead, Architects raised other affirmative defenses, did not press the issue of arbitration, and proceeded with discovery, after the matter had been set for trial. Furthermore, Architects requested the assistance of the trial court to allow more time for and to compel discovery. At no time prior to the July 30, 1984, motion did they give notice that they intended to demand arbitration.

Id. ¶¶ 11-12.

{12} This case is distinguishable from *Architects*, but not in a manner that favors Defendants. Here, unlike the defendants in *Architects*, Defendants did not mention their entitlement to arbitration in their ninth affirmative defense; they simply stated that Plaintiffs' claims were subject to the terms and provisions of the Agreement. But even assuming Defendants' generic invocation of the contract as a whole was sufficient to invoke the arbitration clause, *see* Rule 1-008(C) NMRA ("In pleading to a preceding pleading, a party shall set forth affirmatively . . . arbitration and award[.]"), *Architects* makes clear that waiver may still be found when the defendant "[does] not press the issue of arbitration" and otherwise invokes the judicial process in a manner inconsistent with an intent to compel arbitration. *Architects*, 1985-NMSC-102, ¶ 12. In other words, even if we were to agree with Defendants' challenge to this aspect of the district court's findings of fact, Defendants need to show why the district court's additional findings—i.e., that Defendants continued to act in a manner inconsistent with an intent to arbitrate *even after* filing their answer—are not supported by substantial evidence.

{13} In this regard, Defendants next argue that the district court's finding that "Between June 1, 2011, and December 9, 2013, the parties engaged in substantial judicial activity . . . without any Defendant asserting a right to arbitration" was erroneous because Defendants invoked their right to arbitration in their renewed motions for summary judgment filed July 29, 2013. Although it is true that Defendants quote

the arbitration clause in each motion, the quotations were not provided to support any contention that the court should compel arbitration. Instead, Defendants asked the court to enter summary judgment on the Plaintiffs' claims as either time-barred or failing to create a genuine issue of material fact as to liability. We see no error in the district court's finding that Defendants' motions did not assert their right to arbitration because the motions did not ask the district court to compel arbitration; rather, the motions merely quoted the arbitration clause and then asked the district court to enter judgment on Plaintiffs' claims based upon their tardiness or the absence of disputed material facts within them. *See* Rule 1-007(B)(1) NMRA ("An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing . . . *and shall set forth the relief or order sought.*" (emphasis added)). Accordingly, there is no error in the district court's finding that Defendants failed to assert their right to arbitration between June 1, 2011, and December 9, 2013.

Defendants Waived Their Right to Compel Absent Class Members to Arbitrate Their Claims Against Defendants

{14} Defendants argue that even if the district court's findings of fact support its conclusion that Defendants waived their right to compel arbitration against the named Plaintiffs, the facts the district court relied on to make its conclusion did not support a finding of waiver as to absent members of the class action. In other words, Defendants contend that the district court's finding of waiver as to the absent class members was not supported by substantial evidence because its findings of prejudice and the extent that Defendants had invoked the machinery of the judicial system related only to the named Plaintiffs, not absent class members. Defendants maintain that an order compelling arbitration would not bind absent class members until the district court entered an order certifying this case as a class action, so moving to compel arbitration before this case was certified as a class action would have been futile.

{15} We disagree. Whether a party has waived its right to arbitrate a dispute depends on whether the party "intentional[ly] relinquish[ed] . . . the right to arbitrate." *United Nuclear Corp.*, 1979-NMSC-036, ¶ 36. There is no way to answer this question directly, *see id.* ¶ 51, so a district court must look to a party's outward manifestations in order to determine whether the party "act[ed] inconsistent[ly] with its right to demand arbitration." *Id.* ¶ 36. There is no reported New Mexico case analyzing a motion to compel arbitration against absent class members. And while *United Nuclear Corp.* and *Architects* provide the controlling analysis of waiver in this case, *United Nuclear Corp.* looked exclusively to federal courts' analyses of waiver under the Federal Arbitration Act in determining what considerations should apply in analyzing New Mexico's statutory counterpart. *See United Nuclear Corp.*, 1979-NMSC-036, ¶¶ 32-47. The Tenth Circuit Court of Appeals recently dealt with the issue in *In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, 790 F.3d 1112 (10th Cir. 2015), *petition for cert. filed*, *Cox v. Healy*, (Oct. 14, 2015) (No. 15-466), and we find that case to provide helpful footing to our analysis of the Defendants' argument that the district court should have ordered absent class members to arbitrate their claims against Defendants.

{16} In *In re Cox*, the plaintiffs were consumers who had filed putative class action lawsuits relating to the defendant's provision of cable television service. 790 F.3d at 1114. Actions pending in different jurisdictions were consolidated, and the defendant filed a motion to dismiss all of the named plaintiffs' claims. *Id.* While the motion to dismiss was pending, the defendant began inserting mandatory arbitration clauses into its contracts with customers, "including putative class members." *Id.* The plaintiffs' efforts to certify a nationwide class failed, *id.* at 1115, so the plaintiffs amended their complaint to assert a more discrete geographical class definition. *Id.* The defendant again moved to dismiss the plaintiffs' claims for failure to state a claim for relief, and "did not mention the arbitration agreements in that motion." *Id.*

{17} After the district court denied the defendant's motion to dismiss,

> [t]he parties then engaged in extensive pretrial discovery, issuing interrogatories, submitting declarations, exchanging tens of thousands of documents, locating and hiring experts, and deposing witnesses. In September 2013, named [the plaintiff] moved to certify a class. [The defendant] opposed the motion and moved to exclude the testimony of [the plaintiff]'s experts in support of the motion. Nowhere in its answer did [the defendant] inform the district court of its arbitration agreements or raise the presence of these agreements as an impediment to the alleged numerosity, typicality, and commonality of the class.
>
> During the pendency of the motion for class certification, the parties continued to engage in discovery. [The defendant] also filed a surreply in opposition to the motion for certification, which again did not mention the arbitration provisions. In January 2014, in an order that extensively addressed [the defendant's] arguments relating to the requirements for certification, the court granted class certification. [The defendant] moved for reconsideration on several grounds, but the impact of the arbitration clauses was not among them. That motion was denied. In March 2014, [the defendant] sought permission from this [C]ourt to appeal the certification decision, arguing that the district court erred in analyzing the Federal Rule of Civil Procedure 23 factors. It did not mention arbitration in that petition, which was denied. In April 2014—two years into the litigation—[the defendant] moved to compel arbitration. That same day, it also moved for summary judgment. In its original motion to compel, [the defendant] suggested that it sought to compel arbitration against both the absent class and named [the plaintiff], and attached his arbitration agreement to the motion. It was not until its reply brief that [the defendant] firmly clarified that it was not seeking to arbitrate [the plaintiff]'s claims.

Id. (citations omitted). The district court found that the defendant had waived its right to compel arbitration against the absent class members, and denied the defendant's motion to compel arbitration. *Id.* Defendant appealed. *Id.*

{18} Like the district court below, the Tenth Circuit applied the following six-factor test from *Peterson v. Shearson/Am. Express, Inc.*, 849 F.2d 464 (10th Cir. 1988)

to determine whether the defendant had waived its right to arbitrate:

> (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate; (3) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; (5) whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place; and (6) whether the delay affected, misled, or prejudiced the opposing party.

In re Cox, 790 F.3d at 1116 (quoting *Peterson*, 849 F.2d at 467-68). Although these factors differ from those set out in *Architects*, 1985-NMSC-102, ¶¶ 7-10, the first five *Peterson* factors can be subsumed within *Architects*' invocation of the machinery of the judicial system factor. *See Architects*, 1985-NMSC-102, ¶ 10. The remaining *Peterson* factor is the prejudice suffered by the party opposing arbitration, which corresponds exactly with *Architects*' "prejudice" factor. *See Architects*, 1985-NMSC-102, ¶ 9.

{19} Turning to the Tenth Circuit's application of the *Peterson* factors to the district court's motion to compel arbitration against absent class members in *In re Cox*, the court upheld the district court's finding that the defendant had acted inconsistently with its right to arbitrate against absent class members by failing to mention the clause in its opposition to the plaintiffs' motion to certify a class. *In re Cox*, 790 F.3d at 1116-17. Specifically, the district court found, and the Tenth Circuit agreed, that the defendant's failure to mention the arbitration clause in its response to the motion to certify was strong evidence that the defendant did not intend to compel arbitration because the clause covered the vast majority of absent class members, undermining the plaintiffs' argument that absent class members were too numerous to be joined to the action. *Id.* Further, the Tenth Circuit agreed with the district court that the defendant's invocation of other class-wide bars to relief as grounds against satisfaction of the federally applicable numerosity requirement was strong evidence of an intent not to arbitrate. *In re Cox*, 790 F.3d at 1116-17. Finally, the court noted that the defendant had moved to compel arbitration on the same day as it moved for summary judgment on the plaintiffs' claims, and did not seek a stay of ruling on the summary judgment motions pending the court's ruling on the motion to compel. *Id.* at 1117.

{20} The facts in this case are similar to the facts in *In re Cox*. Defendants made no argument to the district court that the binding arbitration clause in the Agreement limited the number of class members who could be joined to the action. Like the defendant in *In re Cox*, Defendants instead argued that Plaintiffs' putative class action failed to meet the requirements of numerosity and commonality because absent class members' claims were barred for the same reasons as those set out in its motion for summary judgment on the named Plaintiffs' claims. Thus, Defendants in effect conceded that the district court should grant Plaintiffs' motion to certify if it was going to deny Defendants' pending motions for summary judgment on the named Plaintiffs' claims. Like the defendant in *In re Cox*, Defendants did not present the arbitration clause as an alternative class-wide basis for denying Plaintiffs' motion to certify, wholly divorced from the merits of the underlying claims at issue.

{21} The Tenth Circuit also adopted the district court's application of the second, third and fifth *Peterson* factors. *In re Cox*, 790 F.3d at 1117-18. The court found that the defendant's extensive use of discovery procedure, filing of dispositive motions, and interlocutory appeal of the district court's certification order constituted extensive use of the judicial process that was inconsistent with an intent to arbitrate. *Id.* So too here: Defendants have availed themselves of discovery rules that might not otherwise be available in arbitration. Likewise, Defendants have accessed judicial processes by filing multiple dispositive motions below and seeking interlocutory review in this Court of the district court's certification order. The defendant in *In re Cox* could at least point to the fact that the arbitration clauses had been inserted into its contracts with putative class members after litigation had commenced. In this case, the arbitration clause was in effect from the inception of litigation. Thus, the facts in this case provide even stronger support for the district court's finding that Defendants sought to invoke the machinery of litigation in a manner inconsistent with their right to arbitrate.

{22} Finally, the Tenth Circuit agreed with the district court that the *In re Cox* plaintiffs had shown prejudice resulting from the defendant's tardy filing of a motion to compel arbitration:

> Both parties conducted extensive discovery, at great expense, with an eye toward establishing an ascertainable class[.] . . . Now, after briefing and discovery is complete and after [the defendant] lost on the merits, it seeks to remove up to 87% of the class. [S]uch a redo [of the class certification analysis] would surely impose costs on [the plaintiff]—costs that would have been entirely preventable had [defendant] informed the court about the presence of the agreements in the first instance.

Id. at 1118 (internal quotation marks, citation omitted). We acknowledge that the putative class in this appeal contains little more than one hundred members. But the Tenth Circuit analyzed the prejudice created by the defendant's tardy motion to compel arbitration from the perspective of named plaintiffs who sought to represent absent class members. *Id.* The same principle applies in this case: Plaintiffs manifested their intent to seek class certification in their initial complaint filed December 10, 2010. Only after nearly three years of extensive litigation, discovery, and an order certifying the class from which Defendants unsuccessfully appealed, did Defendants file a motion to compel arbitration.

{23} Defendants retort that an order compelling arbitration would not bind absent class members until the district court entered an order certifying this case as a class action, so moving to compel arbitration before this case was certified as a class action would have been futile. But the question is not whether or when absent class members would be bound by an order compelling arbitration; the question is whether Defendants waived their right to invoke their right to arbitrate disputes with absent class members. Simply because the district court did not have jurisdiction to compel absent class members to arbitrate their claims does not mean that Defendants had no obligation to rely upon the clause before the district court granted Plaintiffs' motion to certify.

See id. at 1119 ("The [district] court may not have been able to compel arbitration of absent class members [before it certified a class], but [the defendant's] assertion or mention of its right at that point would have fundamentally changed the course of the litigation, ensured a more expedient and efficient resolution of the trial, and prevented [the defendant's] gamesmanship." (emphasis omitted)).

{24} Ample evidence in the record supports the district court's conclusion that Defendants waived their right to compel absent class members to arbitrate their claims. Plaintiffs sought class certification at the outset of their case. Only after nearly three years of extensive litigation, discovery, and an order certifying the action did Defendants file a motion to compel arbitration. We perceive no error in the district court's finding that Defendants' manner of litigation—moving for dismissal of Plaintiffs' complaint, engaging in extensive discovery, filing multiple motions for summary judgment, opposing class certification and appealing the district court's certification order, all the while omitting any mention of an intent to compel arbitration—manifested an intent to waive their right to compel arbitration against absent class members to such a degree that allowed Plaintiffs and the district court to rely on the waiver.

CONCLUSION

{25} The district court's denial of Defendants' motion to compel arbitration against absent class members is affirmed.

{26} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:
MICHAEL D. BUSTAMANTE, Judge
JONATHAN B. SUTIN, Judge

Certiorari Denied, January 5, 2016, No. S-1-SC-35651
Certiorari Denied, January 25, 2016, No. S-1-SC-35658

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-018

No. 33,405 (filed November 23, 2015)

ART BUSTOS, Personal Representative for the
ESTATE OF JUVENTINO HERNANDEZ, Deceased,
ODILIA PALMA DE CEBALLOS, Wife,
DENISE ALEJANDRA CEBALLOS-PALMA, Daughter, individually,
and ODILIA PALMA DE CEBALLOS, as Parent and Next Friend of
GUADALUPE CEBALLOS-PALMA and SARAH CEBALLOS-PALMA,
Minor Children,
Plaintiffs-Appellants,
v.
CITY OF CLOVIS, CLOVIS POLICE DEPARTMENT, OFFICERS DOUG FORD,
ERIC MULLER, and DAVID BRYANT, Individually and in their official capacities,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
ALBERT J. MITCHELL JR., District Judge

DANIEL R. LINDSEY
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for Appellants

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for Appellees

Opinion

Michael E. Vigil, Chief Judge

{1} This case requires us to revisit the requirements for imposing joint and several liability on the original tortfeasor when there are successive tortfeasors. We conclude that the district court erred in granting summary judgment on Plaintiffs' wrongful death claim after ruling as a matter of law that joint and several liability does not apply in this case.

{2} In addition, we agree with Plaintiffs that Defendants' use of peremptory challenges resulted in the unconstitutional exclusion of Hispanics from the jury, and the defense verdicts on the claims that were tried must therefore be set aside. *See Batson v. Kentucky*, 476 U.S. 79, 85 (1986) (holding that racial discrimination in the jury selection in a criminal case offends the Equal Protection Clause of the United States Constitution); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 616 (1991) (holding that a private litigant in a civil case may not use peremptory challenges to exclude jurors on account of their race).

{3} Finally, we summarily address Plaintiffs' remaining arguments.

I. BACKGROUND

A. Facts

{4} Juventino Ceballos Hernandez, a Mexican national with a wife and three children, came to the United States with a valid visa to Clovis, New Mexico. Mr. Hernandez stayed with friends, Cruz and Petra Chavez, their three children, and Cruz's brother Ivan.

{5} About one month later, Mr. Hernandez suffered from some type of episode. He was eating with the Chavez family and began yelling and pounding his fists on the table. Petra went next door to ask her neighbor, who speaks English, to call for help. The neighbor called 911 telling the dispatcher that Mr. Hernandez was going "crazy" and to please send help.

{6} Officers Bryant and Muller arrived at the Chavez's residence. They knocked and yelled, "police" but did not receive an answer. They heard banging and yelling, which made Officer Bryant want to investigate the possibility of a crime. The door was open, so Officer Bryant stepped inside, with Officer Muller just behind him. Officer Bryant saw Mr. Hernandez sitting at the table eating, banging on the table, and yelling. Mr. Hernandez turned around to face the officers, smiled, waved, and then continued eating, banging on the table, and yelling. However, he was not harming anything or anybody, and no violence was taking place. Mr. Hernandez did not respond to questions Officer Bryant yelled at him in English, and although Officer Bryant knew that Mr. Hernandez spoke Spanish, Officer Bryant continued to yell at Mr. Hernandez.

{7} Suddenly, and without provocation, Mr. Hernandez ran toward the officers and punched or hit them. Officer Bryant arrested Mr. Hernandez for battery on a police officer, took him into police custody, and intended to take him to jail. The officers handcuffed Mr. Hernandez, but when they started taking him out the door, Mr. Hernandez kicked the door, and they all fell to the floor. Officers Bryant and Muller held Mr. Hernandez down on the floor until Officers Ford and Longley arrived. The officers were able to get Mr Hernandez outside after putting him in ankle cuffs and securing the ankle cuffs to the handcuffs behind him by attaching a strap or a dog leash between the ankle cuffs and the handcuffs.

{8} With Mr. Hernandez "hogtied" in this manner, the four officers carried or dragged Mr. Hernandez outside. Once outside of the home, Mr. Hernandez was dragged down the driveway, and he suffered abrasions on his thighs. When a witness saw the officers dragging Mr. Hernandez across the rough driveway on his thighs, she "was horrified by what they did, because it was like they were laughing like they had won." Plaintiffs presented expert testimony that restraining Mr. Hernandez with the hogtie violated police standards of care under the circumstances.

{9} When the ambulance arrived, Mr. Hernandez was in the middle of the driveway on his stomach. His hands were held behind him by the handcuffs, and his legs were bent at the knees, sticking up in the air. Mr. Hernandez's thighs were abraded from being dragged across the rough pavement, and he had blood coming from his mouth. The EMTs put Mr. Hernandez on a long backboard face down and loaded him onto the stretcher. On the backboard, the EMTs secured Mr. Hernandez with spider

straps. Spider straps have two points at the top, two points at the bottom, and three straps across the middle that hook on each side. Officer Bryant rode in the ambulance with Mr. Hernandez as he was under arrest and in police custody. Mr. Hernandez arrived at the emergency room lying face down on the backboard with the handcuffs and ankle cuffs fastened, in addition to the spider straps. His hands and feet were tied together behind his back, his feet crossed.

{10} Dr. Thibodeau was in charge of Mr. Hernandez's treatment at the hospital, and she made the decision to keep Mr. Hernandez restrained with his hands and feet bound together behind his back. Her plan was to keep Mr. Hernandez face down and in the restraints until he was calm and then remove the restraints. In order to calm Mr. Hernandez as quickly as possible, and get him out of the shackles, Dr. Thibodeau provided him with medications to chemically calm him down.

{11} After the medications were administered, Mr. Hernandez quit breathing. A nurse who was with him called a code blue, and the officers went into the room and removed the restraints. The hospital staff resuscitated Mr. Hernandez, however, he suffered brain damage and was in a vegetative state for the next seven months. His family returned him to Mexico where he subsequently died.

B. Procedural History

{12} The estate of Mr. Hernandez and his family (Plaintiffs) filed suit against the City of Clovis, the individual police officers, the hospital, and Dr. Thibodeau. Claims were made for wrongful death, negligent infliction of emotional distress, loss of consortium, battery, excessive force under 42 U.S.C. § 1983 (2012), and medical malpractice. Prior to trial, the hospital and Dr. Thibodeau settled the medical malpractice claims with the family and had no further involvement in the case. We therefore refer to the City of Clovis and the individual police officers herein as Defendants. Prior to trial the district court also granted summary judgment in favor of Defendants on the wrongful death claim and dismissed the claim for negligent infliction of emotional distress.

{13} The parties went to trial on the battery, excessive force, negligence, and loss of consortium claims. The district court granted Defendants a directed verdict on the battery, and the jury found for Defendants on the remaining claims.

{14} Plaintiffs appeal raising eleven issues but only brief five. The issues briefed are: (1) whether summary judgment was properly granted on the wrongful death claim; (2) whether defense counsel's peremptory strikes resulted in the unconstitutional exclusion of Hispanics from the jury; (3) whether the directed verdict on the battery claim was properly granted; (4) whether there was error in excluding the testimony of Plaintiffs' expert witness on hedonic damages; and (5) whether the verdict should be set aside due to defense counsel's statements during voir dire. We address the first two issues separately and summarily address the remaining issues, including those that were not briefed.

II. SUMMARY JUDGMENT ON THE WRONGFUL DEATH CLAIM

{15} Plaintiffs' wrongful death claim was based upon New Mexico tort law and for a violation of constitutional rights under 42 U.S.C. § 1983. The district court granted Defendants' motion for summary judgment on the basis that "liability on the part of the officers ends when Mr. Hernandez was delivered to the [e]mergency [r]oom." We reverse on the New Mexico tort law claim and affirm on the federal claim.

A. Standard of Review

{16} "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. "On appeal from the grant of summary judgment, we ordinarily review the whole record in the light most favorable to the party opposing summary judgment to determine if there is any evidence that places a genuine issue of material fact in dispute." *City of Albuquerque v. BPLW Architects & Eng'rs, Inc.*, 2009-NMCA-081, ¶ 7, 146 N.M. 717, 213 P.3d 1146. We review summary judgment de novo and we resolve all reasonable inferences in favor of the nonmovant and view the pleadings, affidavits, depositions, answers to interrogatories, and admissions in a light most favorable to a trial on the merits. *See Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280. We do so because New Mexico courts "view summary judgment with disfavor, preferring a trial on the merits." *Id. ¶ 8.* "To determine which facts are material, the court must look to the substantive law governing the dispute." *Id.* ¶ 11 (internal quotation marks and citation omitted). In this case, multiple tortfeasor liability and 42 U.S.C. § 1983 are the substantive law governing the wrongful death claim.

B. Multiple Tortfeasor Liability

{17} Under New Mexico's pure comparative fault rules, "when concurrent tortfeasors negligently cause a single, *indivisible* injury... each tortfeasor is severally responsible for its own percentage of comparative fault for that injury." *Payne v. Hall*, 2006-NMSC-029, ¶ 11, 139 N.M. 659, 137 P.3d 599 (emphasis in original); *Gulf Ins. Co. v. Cottone*, 2006-NMCA-150, ¶ 20, 140 N.M. 728, 148 P.3d 814. Other rules apply when successive tortfeasors negligently cause separate, divisible injuries.

{18} "As an exception to the general rule of several liability, the successive tortfeasor doctrine imposes joint and several liability on the original tortfeasor for the full extent of both injuries, those caused by both the original tortfeasor and the successive tortfeasor." *Payne*, 2006-NMSC-029, ¶ 13. For this exception to apply, the first injury is caused by the original tortfeasor and that injury causally leads to a second, distinct injury (or a distinct enhancement of the first injury), which is caused by a second tortfeasor. *Id. ¶* 12. "The original tortfeasor is responsible for both injuries because it is foreseeable as a matter of law that the original injury, such as that suffered from a car accident, may lead to a causally-distinct additional injury, such as when the original injury requires subsequent medical treatment, negligently administered at a hospital." *Id.* ¶ 13; *see also Gulf Ins. Co.*, 2006-NMCA-150, ¶ 20 (discussing elements of successive tortfeasor liability that are required to impose joint and several liability). In order for this narrow exception to comparative negligence to apply, the original injury must be "caused by the negligence of the original tortfeasor, which is then followed by a second or enhanced injury caused by the second tortfeasor." *Payne*, 2006-NMSC-029, ¶ 15. Thus, when the elements of negligence, causation, and a distinct original injury are found, the original tortfeasor may be held jointly and severally liable for the subsequent or enhanced injury as well. *Id.*; *Gulf Ins. Co.*, 2006-NMCA-150, ¶ 20.

{19} In granting summary judgment, the district court found that "[t]he evidence does not support Plaintiffs' theory that the injuries the police allegedly caused Mr. Hernandez necessitated the allegedly negligent medical care administered to Mr. Hernandez in the emergency room." We disagree. Viewing the evidence in the light most favorable to Plaintiffs, as we must, we conclude that Plaintiffs presented evidence pointing to genuine issues of material fact on whether Defendants are jointly and severally liable for the death of Mr. Hernandez. Specifically, there are issues

of material fact as to whether negligence of Defendants caused Mr. Hernandez to suffer personal injuries and whether it was foreseeable that those injuries required medical attention.

{20} Officer Bryant originally arrested Mr. Hernandez, intending to take him to jail. When efforts to take him out of the house in handcuffs failed, the officers hogtied Mr. Hernandez and carried or dragged him outside where he was dragged down the driveway and the ambulance was called. Expert testimony was presented by Plaintiffs that this violated accepted police practices. Mr. Hernandez was lying hogtied face down on the driveway with abrasions on his thighs from being dragged on the pavement and he was bleeding from the mouth when the ambulance arrived. A jury could very well conclude that it was foreseeable to the officers that Mr. Hernandez would receive treatment for these injuries at the emergency room. The evidence also supports a finding that Mr. Hernandez received negligent medical treatment at the emergency room, resulting in a cardiac arrest and death—separate and distinct injuries from those he received in the process of being arrested.

{21} Under the circumstances, it was up to the jury to decide, under appropriate instructions, whether Defendants were jointly and severally liable for the injuries and death suffered by Mr. Hernandez. *See Payne*, 2006-NMSC-029, ¶ 42 ("[If] causation of an original injury is contested, then it would not be appropriate for the trial judge to make this determination in place of the jury."). We therefore reverse the summary judgment granted in favor of Defendants on Plaintiffs' wrongful death claim that is premised upon joint and several liability.

3. Liability Under 42 U.S.C. § 1983

{22} The district court also concluded that the alleged negligent treatment administered at the emergency room "is the superseding cause" of Mr. Hernandez's cardiac arrest and related injuries, and because no reasonable jury could find that the conduct of the police officers "was the proximate cause" of his cardiac arrest and injuries, Defendants were entitled to summary judgment on the 42 U.S.C. § 1983 claim. Plaintiffs have not provided us with any authority demonstrating that summary judgment was improperly granted on this claim on this basis. We therefore affirm. *See State v. Godoy*, 2012-NMCA-084, ¶ 5, 284 P.3d 410 ("Where a party cites no authority to support an argument, we may assume no such authority exists."); *State ex rel. Office of State Eng'r v. Lewis*, 2007-NMCA-008, ¶ 74, 141 N.M. 1, 150 P.3d 375 (citing cases stating that a party must submit argument and authority in order to present an issue for review on appeal, that we will not address a contention not supported by authority, and that an issue is abandoned upon a failure to present argument or authority).

III. THE *BATSON* CHALLENGE

{23} In *Batson*, the United States Supreme Court held that racial discrimination in selecting a jury in a criminal case violates the Equal Protection Clause of the United States Constitution. 476 U.S. at 85. Racial discrimination not only violates the right of the defendant, it also unconstitutionally discriminates against the excluded juror, and undermines public confidence in the fairness of our system of justice. *Id*. at 86-87. *Batson* was subsequently extended to civil cases in *Edmonson*, 500 U.S. at 616-17, and in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129 (1994), the Supreme Court held that "gender, like race, is an unconstitutional proxy for juror competence and impartiality." Discrimination in jury selection causes individualized and structural harm.

> Discrimination in jury selection, whether based on race or on gender, causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process. The litigants are harmed by the risk that the prejudice that motivated the discriminatory selection of the jury will infect the entire proceedings. The community is harmed by the State's participation in the perpetuation of invidious group stereotypes and the inevitable loss of confidence in our judicial system that state-sanctioned discrimination in the courtroom engenders.

Id. at 140 (citation omitted).

Thus, when even a single juror is stricken for racial reasons, reversible error is committed regardless of whether the jury that is chosen is actually fair and unbiased or retains its "representative" character, because equal protection has been violated. *See State v. Gerald B.*, 2006-NMCA-022, ¶ 30, 139 N.M. 113, 129 P.3d 149; *State v. Gonzales*, 1991-NMCA-007, ¶ 17, 111 N.M. 590, 808 P.2d 40, *modified on other grounds by State v. Dominguez*, 1993-NMCA-042, 115 N.M. 445, 853 P.2d 147.

{24} Following *Edmonson*, we for the first time in New Mexico, hold that the *Batson* approach applies to civil cases. In this case, the district court allowed Defendants to use peremptory strikes against Hispanics from the jury with the result that the jury that decided the case had no Hispanics. We are therefore squarely confronted with Plaintiffs' argument that the jury selection violated *Batson*. We first describe the procedure which a district court must follow when a *Batson* challenge is made during jury selection, set forth our standard of review, then apply that analysis to the facts before us.

A. Procedure for Deciding a *Batson* Claim

{25} In *Edmonson*, the Supreme Court stated that the same approach described in *Batson* for determining the existence of racial discrimination in the jury selection of criminal cases also applies in civil cases. *Edmonson*, 500 U.S. at 631. Our precedent in applying *Batson* in criminal cases is well developed. A three-part test is utilized.

{26} First, the opponent of a peremptory challenge has the burden to establish a prima facie case "indicating that the peremptory challenge has been exercised in a discriminatory way[.]" *State v. Salas*, 2010-NMSC-028, ¶ 31, 148 N.M. 313, 236 P.3d 32. To establish a prima facie case the challenging party must show that "(1) a peremptory challenge was used to remove a member of a protected group from the jury panel, and (2) the facts and other related circumstances raise an inference that the individual was excluded solely on the basis of his or her membership in a protected group." *Id*.

{27} Second, if a prima facie showing is made, the burden then shifts to the proponent of the challenge to come forward with a race or gender-neutral explanation for the challenge. *Id.* ¶ 32. This does not require a persuasive or even plausible explanation. *Id.* While a mere denial of a discriminatory motive is not sufficient, *State v. Jones*, 1997-NMSC-016, ¶ 3, 123 N.M. 73, 934 P.2d 267, as long as a discriminatory intent is not inherent in the explanation, the reason offered is deemed to be neutral. *Salas*, 2010-NMSC-028, ¶ 32. If the explanation offered is not neutral, then a finding of purposeful discrimination may be made without any further showing by the opponent to the challenge. *Jones*, 1997-NMSC-016, ¶ 3.

{28} Third, if a neutral explanation is tendered, the district court then determines whether the opponent of the strike has

proved purposeful discrimination. *Salas*, 2010-NMSC-028, ¶ 32. In this regard, the burden of persuasion on discrimination never shifts from the opponent of the strike. *Id*.

B. Standard of Review

{29} We review a district court's factual findings on a *Batson* challenge under a deferential standard of review. *Id.* ¶ 33. In making its factual findings, the district court has a responsibility to " (1) evaluate the sincerity of both parties, (2) rely on its own observations of the challenged jurors, and (3) draw on its experience in supervising voir dire. " *Id* (internal quotation marks and citation omitted).

{30} However, the *Batson* issue ultimately is a constitutional one which we review de novo. *See Salas*, 2010-NMSC-028, ¶ 33. While factual, the issue is also one of policy to be decided de novo because the ultimate constitutional question relates to conduct. Our review is therefore similar to that invoked in instances in which there exist mixed questions of law and fact requiring this Court, as a policy matter, to review de novo issues that involve abstract legal doctrine and evaluative judgments but which are also inherently factual, such as issues of constitutional reasonableness. *See State v. Attaway*, 1994-NMSC-011, ¶¶ 6-10, 117 N.M. 141, 870 P.2d 103; Randall H. Warner, *All Mixed Up About Mixed Questions*, 7 J. App. Prac. & Process 101, 102 (2005).

{31} The standard of review analysis in *Gerald B.*, 2006-NMCA-022, ¶ 36, is incomplete insofar as it states that "we review the action of the trial court under a deferential standard[,]" if by that statement, *Gerald B.* means that the ultimate question of constitutional neutrality is not reviewed de novo. While *Batson* indicates that a district court's findings are to be given "great deference," *Batson*, 476 U.S. at 98 n.21, this does not eliminate de novo review of the constitutional propriety of the peremptory challenges. The conclusion as to the constitutional propriety of the peremptory challenges is still reviewed de novo. *See Jones*, 1997-NMSC-016, ¶ 11 (stating that "an appellate court need not defer to a trial court on whether a reason is constitutionally adequate"); *Bailey*, 2008-NMCA-084, ¶ 15 (same).

C. Analysis

{32} Plaintiffs argue that equal protection was violated when the district court erred in allowing Defendants to use peremptory strikes against three Hispanic prospective jurors and a prospective alternate juror. Defendants respond by arguing that Plaintiffs cannot establish a prima facie case of discrimination and did not overcome Defendants' racially-neutral reasons for striking the prospective jurors.

{33} We first note that Hispanics are a cognizable group under a *Batson* challenge. *State v. Guzman*, 1994-NMCA-149, ¶ 19, 119 N.M. 190, 889 P.2d 225. Secondly, because the district court required Defendants to offer a race-neutral explanation for the strikes at issue, we conclude that the district court found that Plaintiffs made a prima facie case of discrimination against Hispanics. *See Bailey*, 2008-NMCA-084, ¶ 17 (observing that because the district court asked if the state had a race-neutral reason for its challenges, "[t]he district court therefore implicitly found that [d] efendant had made a prima facie showing that the State's challenges were racially motivated").

{34} Defendants used three of their five peremptory challenges against prospective jurors with Hispanic surnames, with two of those five challenges exercised against prospective jurors with Anglo surnames. Defendants also used their one peremptory strike against a prospective juror with a Hispanic surname. Plaintiffs objected on *Batson* grounds to Defendants' peremptory challenges against those with Hispanic surnames. The court required Defendants to explain the reasons for their peremptory challenges of jurors with Hispanic surnames. When the district court polled the jury at the conclusion of trial, there were no Hispanics on the jury. There is not any dispute over whether Plaintiffs established a prima facie case of discriminatory conduct in the exercise of peremptory challenges.

{35} We therefore determine whether Defendants satisfied their burden of providing a racially-neutral explanation for each peremptory strike. *See Gerald B.*, 2006-NMCA-022, ¶ 32 (concluding that because the state proceeded past the first step of the *Batson* analysis without questioning whether there was a prima facie showing, and the district court made findings on discrimination, it was proper to determine on appeal whether the state satisfied its burden to articulate a racially neutral explanation for its peremptory challenge); *see also Hernandez v. New York*, 500 U.S. 352, 359 (1991) (plur. opn. of Kennedy) ("Once a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot."). We independently review defense counsel's explanations to determine if they were constitutionally adequate. *See Gerald B.*, 2006-NMCA-022, ¶ 28 (concluding that because a constitutional question is presented, we apply de novo review to the race-neutral explanations given for peremptory strikes).

1. Juror No. 26

{36} On her juror questionnaire, Juror No. 26 identified herself as a Hispanic who speaks Spanish and English. Defendants used their first peremptory challenge to strike her from the jury. Plaintiffs objected, stating that Defendants asked her no questions in voir dire and asserting that there was no basis for the strike. Responding to the district court's request for a racially-neutral explanation, counsel stated that "she is a nursing home caregiver." Plaintiffs' counsel challenged the reason as insufficient, but the district court ruled that the strike had a "reasonable basis." Subsequently, when Defendants accepted another juror to sit on the jury, Plaintiffs argued that she was also a caregiver, but defense counsel failed to strike her. *See Guzman*, 1994-NMCA-149, ¶ 20 (stating that when the same factors that were identified to strike Hispanics were not applied to strike Anglos, the explanation was not race-neutral). The juror who was accepted worked as an x-ray technician at the time of the trial. An x-ray technician manipulates medical imagery equipment in order to take pictures of the internal structures of the body. In contrast, a nursing home caregiver typically provides assistance to patients in aspects of daily living. Moreover, an x-ray technician may see her patients only once to capture an image while a nursing home caregiver may have daily interactions with her patients. We therefore agree with the district court that there is a distinction between the two occupations and affirm that Defendants' explanation was sufficiently race-neutral.

{37} Plaintiffs also argue for the first time on appeal that another juror who was chosen had experience as a caregiver. This juror's questionnaire states that at the time of trial she worked in retail at Goodwill and her past jobs included "working with people with disabilities[.]" We agree with Defendants that because Plaintiffs did not argue the similarity of the jobs between the juror who was stricken and the juror who sat, Plaintiffs cannot now make that argument for the first time on appeal. "To preserve an issue for review on appeal, it

must appear that appellant fairly invoked a ruling of the trial court on the same grounds argued in the appellate court." *Woolwine v. Furr's, Inc.*, 1987-NMCA-133, ¶ 20, 106 N.M. 492, 745 P.2d 717.

2. Juror No. 27

{38} Defendants used their third peremptory strike to remove Juror No. 27, who self-identified himself as "Mexican" on his juror questionnaire. Plaintiffs objected to the strike and when the district court asked for an explanation, defense counsel stated, "there are other people on this jury who are further down the line that I'd like." Defense counsel had not asked any individual questions of this juror, and Plaintiffs' counsel asserted this was not a sufficient reason. The district court nevertheless allowed the strike on the basis of the explanation given by defense counsel. We do not defer to the district court's determination in regard to Defendants' explanation of the challenge; instead under de novo review we hold that the district court's determination was erroneous.

{39} Defendants repeat on appeal that their underlying rationale for the challenge to Juror No. 27 "was that they had to sacrifice [Juror No. 27] so they could reach another juror who they believed would be favorable toward[] them." This underlying rationale is acceptable in the usual exercise of peremptory challenges where a prima facie case of discriminatory conduct has not been established. Absent a prima facie case of discriminatory conduct, striking jurors tending to or perceived to be sympathetic with the opposing party's case, in hopes of getting a juror who is not so predisposed, has always been considered fair game and a virtually unchallengeable prerogative of counsel. Defendants' underlying rationale is not acceptable when a party has established a prima facie case of discriminatory conduct in the exercise of peremptory challenges. If a discriminatory intent is inherent in the reason for the challenge, the reason is not race-neutral. *See Salas*, 2010-NMSC-028, ¶ 32.

{40} *Batson* warned that the party making the strike does not rebut a prima facie case of discrimination "merely by denying that he had a discriminatory motive or affirming his good faith in making individual selections." *Batson*, 476 U.S. at 98 (alterations, internal quotation marks, and citation omitted). Instead, the party making the strike "must give a clear and reasonably specific explanation of his legitimate reasons for exercising the challenges." *Id.* n.20 (internal quotation marks and citation omitted). "This warning was meant to refute the notion that a prosecutor could satisfy his burden of production by merely denying that he had a discriminatory motive or by merely affirming his good faith." *Purkett v. Elem*, 514 U.S. 765, 769 (1995) (per curiam); *see Miller-El v. Dretke*, 545 U.S. 231, 239 (2005) (reiterating that the striking party 'must give a clear and reasonably specific explanation of his legitimate reasons for exercising the challenge' (quoting *Batson*, 545 U.S. n.20)); *State v. Goode*, 1988-NMCA-044, ¶ 9, 107 N.M. 298, 756 P.2d 578 (stating that the party excusing jurors "must articulate a neutral explanation related to the particular case, giving a clear, concise, reasonably specific legitimate explanation for excusing those jurors").

{41} The reason must be sufficiently specific to allow the party challenging the strike to exercise its right "to refute the stated reason or otherwise prove purposeful discrimination." *Jones*, 1997-NMSC-016, ¶ 3. It must also be sufficiently specific to enable the district court to determine whether the opponent of the strike has proved purposeful discrimination and, therefore, to safeguard equal protection. *See Goode*, 1988-NMCA-044, ¶ 9 ("[T]he trial court may not merely accept the state's proffered explanations, but has a duty to examine them and decide whether they are genuine and reasonable."). As more fully explained by *State v. Giles*, 754 S.E.2d 261, 265 (S.C. 2014), in order for the explanation to be legally sufficient at the second step of the *Batson* analysis, the explanation

> must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty to assess the plausibility of the reason in light of all the evidence with a bearing on it. Reasonable specificity is necessary because comparison to other members of the venire for purposes of a disparate treatment analysis, which is often used at the third step of the *Batson* process to determine if purposeful discrimination has occurred, is impossible if the proponent of the challenge provides only a vague or very general explanation. The explanation given may in fact be implausible or fantastic, as noted in *Purkett*, but it may not be so general or vague that it deprives the opponent of the challenge of the ability to meet the burden to show, or the trial court of the ability to determine whether, the reason given is pretextual. The proponent of the challenge must provide an objectively discernible basis for the challenge that permits the opponent of the challenge and the trial court to evaluate it.

Id.

Thus, numerous cases have concluded there was error at the second step of the *Batson* analysis where the reasons proffered for striking a juror were not sufficiently "clear and specific" in providing a factual basis for a court to review for legitimacy. *See Moeller v. Blanc*, 276 S.W. 3d 656, 662-63; 666 (Tex. Ct. App. 2008) (collecting cases and concluding that "obscure and vague" explanations for striking a juror are insufficient).

{42} What obviously overly tips the propriety balance of Defendants' peremptory challenge of Juror No.27 toward a discriminatory pattern is Defendants' having exercised their peremptory challenges against Hispanic-surnamed jurors in a manner that appears to have assured that no Hispanic-surnamed person would sit on the jury, and, as well, that the jury would not consist of a sufficient number of Hispanic jurors who might be prone to favor Plaintiffs. Defendants' actions had to have raised an eyebrow when, after the game was played, the field was laid bare of Hispanic jurors and the only basis for challenging Juror No. 27 was that Defendants wanted to have a juror that they believed would be favorable toward them.

{43} While Defendants' explanation of this challenge was race-neutral on its face, more was required. *See Giles*, 754 S.E.2d at 263, 265-66. Defendants did not examine the stricken jurors on voir dire in an effort to uncover information that would lead Defendants to be concerned about juror predisposition. There may have been proper, race-neutral reasons why Defendants wanted another juror "further down the line", but the record before us fails to disclose what those reasons might have been. We are therefore left without constitutionally permissible, race-neutral reasons for striking Juror No. 27. "If . . . general assertions were accepted as rebutting a defendant's prima facie case, the Equal Protection Clause would be but a vain and illusory requirement." *Batson*, 476 U.S. at 98 (internal quotation marks and citation omitted). Under the totality of circumstances, one can reasonably read Defendants' explanation to really say, "we struck [Juror No. 27] because, being His-

panic, he likely would favor Plaintiffs, and we preferred finding a non-Hispanic juror instead who would likely favor Defendants." We therefore hold that the district court erred in allowing Defendants to strike Juror No. 27.

3. Juror No. 36

{44} Defendants had previously attempted to strike Juror No. 36 for cause because they were worried her non-treated asthma would cause delay if she had an asthma attack during the trial. The district court denied the strike for cause. Defense counsel then used a peremptory challenge, and Plaintiffs' counsel objected, alerting the court that this would be the third potential Hispanic juror struck by Defendants. Defendants gave their explanation and the court allowed the strike, reasoning that "it's an appropriate use of a peremptory to challenge a juror that you attempted to challenge for cause and were unable to get it done[.]"

{45} Plaintiffs argue that because Defendants were unable to strike Juror No. 36 for cause does not give rise to the appropriate use of a peremptory strike. We disagree. Race-neutral reasons for peremptory strikes do not need to rise to the same level needed to justify a challenge for cause. *State v. Sandoval*, 1987-NMCA-041, ¶ 15, 105 N.M. 696, 736 P.2d 501. Here, Defendants proffered a plausible race-neutral explanation; potential delay of trial from a potential juror's medical condition. We therefore affirm the district court's determination that a sufficient race-neutral explanation was given for striking Juror No. 36.

4. Juror No. 40

{46} After the jury was picked, Juror Nos. 40 and 41 were next in line for selection as alternate jurors and both of them were Hispanic. When Defendants struck Juror No. 40, Plaintiffs objected, arguing this was the fourth Hispanic stricken, indicating a pattern, and when asked by the district court for an explanation for the strike, counsel responded that he was stricken because he was unemployed.

{47} Defendants urge us to conclude that because no alternate juror was called to deliberate on the case, that the harmless error standard is appropriate to apply. We reject this suggestion. If a prospective juror is stricken because of race, equal protection is violated, and the verdict must be reversed, notwithstanding that juror did not deliberate on the case. Likewise, if a prospective alternate juror is stricken because of race, equality is violated, whether or not that juror actually deliberates on the case. In both circumstances, the harm to our society and system of justice is identical, and it does not matter whether the jury that actually decided the case is 'representative' or unbiased. Our Constitution does not allow for such discrimination in the selection of our juries in civil or criminal cases.

{48} Nevertheless, we conclude that Defendants' explanation that Juror No. 40 was stricken because he was unemployed is sufficiently race-neutral in the circumstances of this case. Anticipating this conclusion, Plaintiffs for the first time on appeal suggest this was a pretext because one of the jurors who was actually seated was also unemployed. Because this was not brought to the attention of the district court, we do not consider it further. *Woolwine*, 1987-NMCA-133, ¶ 20.

{49} When viewed in the total selection process, Defendants' challenges indicate a pattern of conduct and a motive to keep Hispanics off of the jury. Cumulatively, the challenges teeter on the edge of impropriety. The challenges carried a suspicious motivation of ridding the jury of Hispanics, leaving a distinct overview of distrust creating a prima facie case. When looking at the totality of the proceedings, it is reasonable to conclude that Defendants' explanation of the challenge to Juror No. 27 was not race-neutral and was pretextual.

{50} Defendants nevertheless argue that their five peremptory strikes should not give rise to an inference of discriminatory intent because they also struck Anglo-surnamed jurors, indicating exclusion based on non-racial factors, and also because Plaintiffs exercised their five peremptory strikes against jurors with Anglo surnames, indicating a pattern of discrimination against jurors with Anglo surnames. These arguments do not change things. Defendants' actions are at issue here, not Plaintiffs' actions. Defendants' actions create strong inferences of discriminatory intent. While Plaintiffs' actions may as well, neither Defendants nor the district court raised a *Batson* issue in that regard.

{51} The jury selection in this case violated *Batson*. The remedy for such a violation in a criminal case is a new trial. *Guzman*, 1994-NMCA-149, ¶ 20. The same remedy applies in a civil case. *See*, *e.g.*, *Woodson v. Porter Brown Limestone Co.*, 916 S.W. 2d 896, 907 (Tenn. 1996); *Moeller*, 276 S.W. 3d at 666; *Davis v. Fisk Elec. Co.*, 268 S.W. 3d 508, 526 (Tex. 2008). The verdict of the jury is reversed and the case is remanded to the district court for a new trial.

IV. REMAINING ARGUMENTS

{52} Plaintiffs contend that the district court erred in directing the verdict of the jury in Defendants' favor on the battery claim against the individual police officers. We agree. Looking at the facts recited herein alone, and they were not the only facts offered in support of the claim, we conclude that the district court erred. *See Selmeczki v. N.M. Dep't of Corr.*, 2006-NMCA-024, ¶ 29, 139 N.M. 122, 129 P.3d 158 ("It is black-letter law that causing an offensive touching, even indirectly to another's clothing and not resulting in injury, is the tort of battery."); Restatement (Second) of Torts § 18 (1965) (stating that an actor is liable for battery if "(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) an offensive contact with the person of the other directly or indirectly results"); *see also Strickland v. Roosevelt Cnty. Rural Elec. Coop.*, 1980-NMCA-012, ¶ 14, 94 N.M. 459, 612 P.2d 689 ("[D]irected verdicts are not favored and should be granted only when the jury could not reasonably and legally reach any other conclusion.").

{53} Defendants argue for the first time on appeal that an intentional tort such as battery does not survive the death of a decedent when the death is unrelated to the tort. We do not address this argument, as it was not presented to the district court. *See Woolwine*, 1987-NMCA-133, ¶ 20.

{54} We do not address the remaining issues raised by Plaintiffs because those issues may not reoccur at the re-trial. In addition, those issues identified as issues Nos. 5, 6, 7, 8, 10, and 11 in Plaintiffs' brief in chief were not briefed, and we do not address them. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (stating that issues that are unsupported by any cited authority will not be addressed on appeal and that the appellate court will not do this research for counsel).

V. CONCLUSION

{55} The summary judgment and jury verdict in favor of Defendants are reversed, and the cause is remanded to the district court for a new trial in accordance with this Opinion.

{56} IT IS SO ORDERED.
MICHAEL E. VIGIL, Chief Judge

WE CONCUR:
JONATHAN B. SUTIN, Judge
RODERICK T. KENNEDY, Judge

Thank You to

Miller Stratvert

for its Generous Support of the Civil Legal Clinic!

The Second Judicial District Pro Bono Committee and the Volunteer Attorney Program would like to thank the attorneys of Miller Stratvert for volunteering their time and expertise at its March 2, 2016 Civil Legal Clinic. The Clinic is held on the first Wednesday of every month at the Second Judicial District Courthouse in the 3rd floor conference room from 10 a.m. until 1 p.m. Twenty-six individuals received assistance at the March clinic thanks to the dedication of five attorneys and a staff member from Miller Stratvert and one attorney who assists with the clinic on a regular basis. Thank you!

Miller Stratvert:
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Tom Mack
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The Second Judicial District Pro Bono Committee is hosting ***Law-La-Palooza***, a free legal fair, on **Thursday, May 19, 2016** from **3:00-6:00 PM** at the **Wells Park Community Center**, 500 Mountain Rd. NW, Albuquerque, NM 87102. Attorneys will meet with individuals on a first come, first served basis.

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Assistant City Attorney: Assistant City Attorney position available with the Litigation Division with desired experience in civil litigation handling pretrial discovery, motion practice, trial preparation, and trial. We are seeking attorneys who have an interest in defending civil rights, personal injury, and premises liability cases within a positive team environment. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please submit resume to attention of "Litigation Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov. Application deadline is Tuesday, May 17, 2016.

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The Twelfth Judicial District Attorney's Office in Otero/Lincoln County has job openings available for Deputy District Attorney, Senior Trial Attorney or Assistant Trial Attorney positions. Job requirements, qualifications, skills, and other information pertaining to this position can be viewed at the New Mexico District Attorneys' website at www.da.state.nm.us under personnel inquiries. Salary offered will be based on qualifications and experience and is consistent with the New Mexico District Attorney's Association Pay and Compensation Plan. Interested individuals should send a letter of interest and a resume to District Attorney, David Ceballes, 1000 New York Ave., Room 101, Alamogordo, NM 88310 or email at 12thda@da.state.nm.us.

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Enlace Comunitario (EC), a social justice non-profit organization in Albuquerque, N.M. works to eliminate domestic violence in the immigrant community and is seeking applications for a Legal Director. With a staff of approximately 30, EC provides direct services to more than 750 survivors and child witnesses of domestic violence a year and engages former victims and community members in prevention and advocacy efforts. The legal department takes referrals for services from our client base. The Domestic Violence legal director represents EC clients and supervises the legal work of the department. The legal director must be an experienced and effective attorney, mentor and trainer. The legal director must lead the legal team in collaborating with the multi-disciplinary team at Enlace and work well with court personnel, other agencies and community members. The Legal Director is part of the leadership team and will work collaboratively to further EC's mission. Required: State of New Mexico Bar License or out of state license eligible for NM licensure. At least three years of family law practice experience for legal director position. Spanish/ English bilingual ability. Preferred: Preference will be given to individuals with experience working with domestic violence, immigrant rights and / or social justice issues. Competitive salary and benefits depending on experience. This is a full-time position. If interested, please send your resume and letter of interest to aslopez@enlacenm.org. More information about the position can be found on EC's web site. http://www.enlacenm.org/ Closing date: Open until filled.

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Assistant City Attorney: Assistant City Attorney position available within the Safe City Strike Force Division, with primary duties to serve as a special prosecutor in the Metropolitan Court, Traffic Arraignments. Secondary duties are representing APD in DWI Vehicle Seizure and Forfeiture cases, which include weekly administrative hearings and district court proceedings. Other APD and IPRA matters may be assigned. Applicant must be admitted to the practice of law by the New Mexico Supreme Court and be an active member of the Bar in good standing. One (1) year of attorney experience, including knowledge of civil and/or criminal practice and procedures in the district and Metropolitan courts, is preferred, but not required. Spanish language fluency is preferred, but not required. A successful candidate will have strong communication skills and be able to work within a diverse legal team and interact daily with the public. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please submit resume to attention of "Traffic Arraignment Attorney Application"; c/o Ramona Zamir-Gonzalez, Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov. Application deadline is Tuesday, May 17, 2016.

Associate Attorneys

The Santa Fe office of Hinkle Shanor LLP seeks two associate attorneys with 0 to 5 years of experience for its employment and civil rights defense practice. Candidates should have a strong academic background, excellent research and writing skills, and the ability to work independently. Applicants must live in or be willing to relocate to Santa Fe. Please send resume, law school transcript, and writing sample to Hiring Partner, P.O. Box 2068, Santa Fe, New Mexico 87504-2068

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Houser & Allison, APC, a Commercial Litigation Law Firm with a focus on mortgage banking litigation is looking to expand its New Mexico office. We are looking for attorneys with 6-12 years' experience in the New Mexico area, including trial experience. The ideal candidate must have strong writing, research and communication skills. The candidate must be a self-starter and able to work independently. Resumes to: rnorman@houser-law.com

Assistant General Counsel, Lawyer-Advanced (Position # 18526)

The New Mexico Department of Transportation is recruiting to fill a Lawyer-Advanced position. The position provides representation of the Department in matters involving public finance, contracts, administrative law, and government procurement law. The ideal candidate will handle legal review and analysis of the Department's financial transactions, including grant and bonding matters; draft and review contracts; assist in compliance matters; review and provide analysis on proposed policies, regulations, and legislation; and perform other duties as assigned. The ideal candidate may also be assigned primary responsibility for matters relating to the Department's Transit & Rail, Planning and Traffic Safety Divisions. The ideal candidate must be able to interact with others professionally, attend frequent meetings, make presentations in a variety of contexts, and possess advanced legal-based skills in research, reading and writing. The requirements for the position are a Juris Doctor Law degree from an accredited law school, a current license as a New Mexico attorney in good standing and a minimum of five (5) years of experience practicing law, of which at least three (3) years must be in areas of contract law and financial transactions. The position is a Pay Band 80, annual salary range from $44,782 to $77,917, depending on qualifications and experience. All state benefits will apply. The position is located in Santa Fe. Overnight travel throughout the state, good standing with the New Mexico State Bar and a valid New Mexico or other state driver's license are required. We offer the selected applicant a pleasant environment, supportive colleagues and dedicated support staff. Working conditions are primarily in an office or courtroom setting with occasional high pressure situations. Interested persons must submit an on-line application through the State Personnel Office website at http://www.spo.state.nm.us/, no later than the applicable closing date posted by State Personnel. Additionally, please submit a copy of your resume, transcripts and bar card to Shannell Montoya, Human Resources Division, New Mexico Department of Transportation, located at 1120 Cerrillos Road, Room 135, P.O. Box 1149, Santa Fe, New Mexico 87504. The New Mexico Department of Transportation is an equal opportunity employer.

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The New Mexico Department of Transportation is recruiting to fill a Lawyer-Advanced position. The position provides representation of the Department in matters involving employment and labor law, civil rights, torts, administrative law, and as otherwise assigned. The ideal candidate will provide the highest level of legal services, perform legal research, advise administration on matters of law and policy, and represent the Department in civil and administrative legal matters; including in litigious areas of civil rights, personnel, labor relations, torts, collections, and administrative law. The ideal candidate will both assist and act as lead counsel in complex litigation, determine legal position and strategy, assess litigation risk, draft and file legal documents, interview and prepare witnesses, manage caseloads, and keep the client administration informed. The ideal candidate will also independently conduct, lead and participate in negotiations and mediations in state and federal forums. The requirements for the position are a Juris Doctor Law degree from an accredited law school, a current license as a New Mexico attorney in good standing and a minimum of five (5) years of experience practicing law, of which at least three (3) years must be in areas of employment and labor law, tort law, and administrative law. The position is a Pay Band 80, annual salary range from $44,782 to $77,917, depending on qualifications and experience. All state benefits will apply. The position is located in Santa Fe. Overnight travel throughout the state, good standing with the New Mexico State Bar and a valid New Mexico or other state driver's license are required. We offer the selected applicant a pleasant environment, supportive colleagues and dedicated support staff. Working conditions are primarily in an office or courtroom setting with occasional high pressure situations. Interested persons must submit an on-line application through the State Personnel Office website at http://www.spo.state.nm.us/, no later than the applicable closing date posted by State Personnel. Additionally, please submit a copy of your resume, transcripts and bar card to Shannell Montoya, Human Resources Division, New Mexico Department of Transportation, located at 1120 Cerrillos Road, Room 135, P.O. Box 1149, Santa Fe, New Mexico 87504. The New Mexico Department of Transportation is an equal opportunity employer.

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City Attorney

The City of Englewood, Colorado, is a first-tier suburb located just south of Denver in Arapahoe County. The city has a population of 30,255 and is ideally situated in the South Platte River Valley, east of the Front Range of the Southern Rocky Mountains. Englewood is known for its small town charm and proximity to the Metro Denver area. Englewood is a home-rule City with a Council-Manager form of government. The City has 476 benefited employees who staff departments providing a full array of municipal services. The total annual budget for FY16 is $45 million. As the chief legal advisor and attorney for the City of Englewood, the City Attorney is appointed by, and reports directly to, the Mayor and City Council, while working closely with the City Manager and the senior leadership of the municipal organization. The chosen candidate will hold a Juris Doctor from a school of law accredited by the American Bar Association, be a duly licensed attorney in the State of Colorado, and be in good standing with the Bar of the State of Colorado. The City Charter requires a minimum of five years of experience in practicing law. The City will consider candidates who are licensed practicing attorneys in other states for which the Bar of the State of Colorado accepts reciprocity through its Admission on Motion process. View complete position profile and apply online at: http://bit.ly/SGRCurrentSearches. For more information on this position contact: Doug Thomas, Regional Director, Strategic Government Resources, DouglasThomas@governmentresource.com

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Two Paralegal positions are available within City of Albuquerque, Legal Department; one in the Real Estate Land Use/Municipal Affairs Division, and one in the Litigation-Employment Division. POSITION SUMMARY: Assist assigned attorney or attorneys within the Real Estate Land Use/Municipal Affairs Division or Litigation-Employment Division in performing substantive legal work from time of inception through resolution and perform a variety of paralegal duties in specific areas of law. Legal work will include cases in administrative proceedings and state and federal courts. MINIMUM EDUCATION AND EXPERIENCE REQUIREMENTS (related education and experience may be interchangeable on a year for year basis): High School Diploma or GED, plus seven (7) years of experience as a paralegal or a legal secretary/assistant working under the supervision of a licensed attorney. Associate's Degree in Paralegal Studies or a Certificate in Paralegal Studies preferred. ProLaw and/or experience with a case management system is preferred. TO APPLY: All applicants must submit, by May 18, 2016, a City Application. Resumes will not be accepted in lieu of the application. An On-Line Application Process can be accessed at the web site: http://www.cabq.gov/jobs. Copies of required certifications, registrations, and/or licenses, if not attached on-line, must be provided at the time of interview.

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City of Albuquerque - Paralegal Position: Traffic Arraignments

One Paralegal position is available within City of Albuquerque, Legal Department, Safe City Strike Force Division, Traffic Arraignments. POSITION SUMMARY: Paralegal with a civil or criminal litigation background who has the skills, knowledge, and ability to assist attorneys primarily in Metropolitan Court Traffic Arraignments, and as assigned in civil or criminal litigation or administrative matters, including DWI vehicle forfeitures and IPRA. MINIMUM EDUCATION AND EXPERIENCE REQUIREMENTS (related education and experience may be interchangeable on a year for year basis): High School Diploma or GED, plus seven (7) years of experience as a paralegal or a legal secretary/assistant working under the supervision of a licensed attorney. Associate's Degree in Paralegal Studies or a Certificate in Paralegal Studies preferred. Bilingual fluency, orally and in writing, to translate Spanish to English and English to Spanish in a fast-paced Court environment, is highly preferred. TO APPLY: All applicants must submit, by May 18, 2016, a City Application. Resumes will not be accepted in lieu of the application. An On-Line Application Process can be accessed at the web site: http://www.cabq.gov/jobs. Copies of required certifications, registrations, and/or licenses, if not attached on-line, must be provided at the time of interview.

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Busy personal injury firm seeks legal assistant to handle pre-litigation cases. Ideal candidate will be responsible for ordering medical records and bills, drafting demand packages, speaking with client, medical providers and insurance adjusters. Spanish speaking a plus but not required. Salary depends on experience. Firm offers benefits. Fax resume to 505-242-3322 or Email resumes to: nichole@whitenerlawfirm.com

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Robles, Rael & Anaya, P.C. is seeking a paralegal for its civil defense practice. Firm primarily represents governmental entities. Practice involves general civil representation, civil rights defense, and complex litigation. Three years' experience or Paralegal Certificate preferred. Competitive salary and benefits. Please submit resumes to jr@roblesrael.com

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Positions Wanted

Legal Assistant/Paralegal Seeks FT Employment
8 yrs. exp., P/I, Ins. Def., W/C, Gen./Civil Litigation, Transcription, Type 60 wpm, Draft Corres./Basic Pldgs., Proofrdg./Formatting,Odyssey-CM/ECF-WCA, Cust. Svc., Client Interaction/Communication, Prepare/Answer Discovery, Med. Rcrd/Bill Requests, Notary. Word-Excel-Outlook-Email, Calendar/File Maintenance, A/R, A/P. Passionate, Hard-Working, Attn./Detail, Punctual, Quick Study, Multi-Tasker, Profssnl. Able to start in 2 weeks. For Resume, Salary Expectations and References, please contact LegalAssistant0425@yahoo.com.

Experienced Business Attorney
Experienced attorney seeks position or office share with referrals/collaboration in business-oriented litigation or transactional practice. nmatty6@gmail.com

Services

Briefs, Research, Appeals—
Leave the writing to me. Experienced, effective, reasonable. cindi.pearlman@gmail.com (505) 281 6797

Contract Paralegal
Contract paralegal with 25+ years of experience available for help with all aspects of civil litigation, working from my own office. Excellent references. civilparanm@gmail.com.

Get it done
Contract paralegal with proven record in civil litigation. I produce favorable results. Research, briefs, all aspects of case management. tracydenardo.sf@gmail.com. 505-699-4147

Office Space

Office Building For Lease
Office building for lease adjacent to State Capitol Complex and Supreme Court by owner. 3 offices, conference room, waiting and support staff area. 505 988 2970

503 Slate NW
503 Slate NW, Affordable, five large offices for rent, with secretarial area, located within one block of the courthouses. Rent includes parking, utilities, phones, fax, wireless internet, janitorial services, and part-time bilingual receptionist. All offices have large windows and natural lighting with views of the garden and access to a beautiful large conference room. Call 261-7226 for appointment.

833 Lomas Blvd - Office Building for Rent
Short walk from courthouses. Four offices, copy room, kitchen, light-filled reception area, high ceilings, beautiful wood trim. $2,000 p/month- negotiable with 2-3 year lease. Contact Maia: 917-439-8400 or maiaeaston@gmail.com

Miscellaneous

Will Search
Looking for a will for Helen Villaneuva Montoya a/k/a Helen Villanueva Cordova born 6/1/1923, died 12/5/2012. Lived in Albuquerque most of her life. If you have any information, please contact Michael Hughes, Silva & Associates, PC, at 505-246-8300.

Navajo Law Seminar Oct. 14
Sutin, Thayer & Browne law firm will host its annual Navajo Law Seminar on October 14, 2016, in Albuquerque, along with co-host firm Johnson Barnhouse & Keegan. The nonprofit event will offer 8 CLE credits (including 2 ethics credits) applicable to the State Bar of New Mexico and the Navajo Nation Bar. Venue, fees and other details coming soon at sutinfirm.com/news.

2016 Annual Meeting– Bench & Bar Conference

Aug. 18-20, 2016 • Buffalo Thunder Resort & Casino • Santa Fe

Keynote Speaker:
Ruth Bader Ginsburg
Associate Justice, U.S. Supreme Court

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and mention the State Bar of New Mexico

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For information on sponsorship opportunities, *Annual Meeting Program* advertising or exhibit space, contact Stephanie Wagner, development director, at swagner@nmbar.org or 505-797-6007

STATE BAR of NEW MEXICO